UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

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IN RE: AUTOMOTIVE PARTS ANTITRUST LITIGATION

MDL NO. 12-2311

_____/

STATUS CONFERENCE / MOTION HEARINGS

BEFORE THE HONORABLE MARIANNE O. BATTANI
United States District Judge
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
Wednesday, September 9, 2015

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Detroit, Michigan

Wednesday, September 9, 2015

at about 10:03 a.m.

— — —

(Court and Counsel present.)

THE CASE MANAGER: Please rise.

The United States District Court for the Eastern District of Michigan is now in session, the Honorable Marianne O. Battani presiding.

All persons having business therein, draw near, give attention, you shall be heard. God save these United States and this Honorable Court.

Please be seated.

THE COURT: Good morning.

ATTORNEYS: (Collectively) Good morning, Your Honor.

THE CASE MANAGER: The Court calls Case No. 12-md-02311, in re: Automotive Parts Antitrust Litigation.

THE COURT: All right. Welcome everybody. Got enough room back there? Do you need seats? Oh, they can push over. Come on, sit down.

This is like church, you don't want to sit down, come to the front or anything like that.

Let's begin our agenda, which is not too bad for

today, I think we have got a pretty good agenda.

The first one is the status of the settlements of all actions in the MDL. I don't know if anybody needs to speak on that, I don't think that's -- no. Okay. This was all in your status report so I'm just going over a few things.

The depositions of incarcerated U.S. -- non-U.S. citizens.

MR. FINK: Your Honor, Greg Hansel will speak to that for the direct purchaser plaintiffs.

MR. HANSEL: Good morning, Your Honor. Greg Hansel for the direct purchaser plaintiffs.

At the end of the status report is a list of incarcerated persons whose release times are estimated in that table. As to all other persons who have been released who are non-U.S. citizens, the various plaintiff groups have worked out stipulations for those persons to appear for their depositions either in the United States or as agreed in the stipulations. There's one stipulation that we were continuing to hammer out, and I believe as of this moment we have probably been able to reach an agreement on that, so we really have nothing to report today that requires the Court's attention other than the parties appear to be working through this well.

THE COURT: So it is going as you had anticipated?

MR. HANSEL: Yes.

THE COURT: Good.

MR. HANSEL: Thank you, Your Honor.

THE COURT: Okay. Thank you.

I have a couple of notices -- oh, let me, Mr. Hansel, while you are up here, you are still the one primarily doing the agenda?

MR. HANSEL: Yes, Your Honor.

THE COURT: Thank you.

MR. HANSEL: You're welcome.

THE COURT: I just wanted to say that.

Local counsel, there was one circumstance in which I signed an order waiving local counsel but otherwise you all have to have local counsel, this is not the type of case that I'm going to change the rules on, so pro hac vice, we don't have that here so there is no such animal in this district.

Motion to withdraw, I think my clerk tells me, Kay, that most of you have had this, but I have a new order and this is due to the volume of the attorneys in the litigation, and it says that an attorney -- any attorney withdrawing from this litigation is to submit a proposed order withdrawing appearance. Once the order has been filed, the attorney shall docket a discontinuance of NEFs, you probably know more about what that is than I do, which is found under order filing and other documents, and the attorney shall also

remove his or her name from all cases listed in the order, so this will be posted and you will have it. The problem we had is when we have to remove the attorney from every case it takes an inordinate amount of time given the numbers here so we will follow this protocol.

All right. And the status report, I have the pending matters referred to the master. Does anyone else -- our master is here today, Mr. Esshaki is here.

Mr. Esshaki, do you have anything that you wish to say before we proceed?

MASTER ESSHAKI: Your Honor, just that I believe we are handling the motions on a timely manner and every one of them I'm making somebody happy and somebody sad. And I do appreciate, as I have said each time, the quality of the work that people have sent me to review, so I thank you all for your professionalism.

THE COURT: Thank you. Now you get the idea of what it is like to be a judge, right? Somebody comes up to you and says I just had a case before her and then you wait for the shoe to drop; they either liked it or they didn't. Okay.

Dates for the next status conference, we have one already scheduled for January 20th, I think that still is on at 10:00 in the morning, and we will hope for no snow. And then we need to set a date for the next conference, how is

May 11th, May 11th? I know we are thinking ahead but is there any big thing scheduled for that day that I might not know about?

(No response.)

THE COURT: Okay. Let's schedule it then for May 11th, 2016 at 10:00.

Before we get into the motions, are there any other procedural administrative matters? Yes, please approach the podium.

MR. BARRETT: May it please the Court, I'm Don Barrett, co-lead for the auto dealers.

Your Honor, because of the auto dealer representation of so many different auto dealers, different makes all over the country, we have -- and because we have money in the bank that we are about to distribute, we hopefully will distribute by the end of the year if things go well, that we have sought an independent consultant who would assist in formulating an appropriate allocation system with regard to damages.

During that search we contacted the National Automobile Dealers Association, which represents virtually all the new car dealers in the United States, and we asked for a recommendation. They recommended quickly Mr. Stuart Rosenthal, who is here, as a highly-appropriate individual to assist us in this regard. He's in the past participated in

numerous NADA programs. He served as a representative of the industry as a participant in Federal Trade Commission panels on matters affecting dealership operations at the request and recommendation of the National Automobile Dealers Association.

Mr. Rosenthal, who is here beside me, is a lawyer. He is admitted to the bar in the state of New York and then the Southern District of New York in 1978. He started working in the New York City Department of Consumer Affairs in 1979 holding management positions in that agency for the next ten years. He has been vice chairman of the National Conference on Weights and Measures, which is an office of the U.S. Department of Commerce. In 1989 he joined the New York State Attorney General's Office as assistant AG where he focused primarily on consumer protection matters.

After 16 years of public service Mr. Rosenthal became the general counsel of the Trade Association of the Greater New York Automobile Dealers Association which represents virtually all of the automotive dealers in the downstate New York.

THE COURT: What did he become to the Automotive Dealers Association, say that again?

MR. BARRETT: In 1989 he --

THE COURT: General counsel, he became general counsel, is that what you said?

MR. ROSENTHAL: Yes.

MR. BARRETT: Okay. He's continued to work with regulators to improve the industry's relations with government and to assist dealers staying on top of expanding regulatory requirements.

We asked him to come here today just mainly so that he can meet the Court and the Court could -- if the Court happened to have any questions for Mr. Rosenthal either now or in the future we will certainly make him available.

THE COURT: All right. I don't have any questions. I didn't know you were doing this. His fees will be paid out of the proceeds?

MR. BARRETT: He's a consultant to us, and his fees will be paid by us, and we want this to be a transparent deal and he's working on that. We have to have an allocation plan by October 15th, we are on schedule to do that and to present it to the Court for approval at that time.

THE COURT: All right. Does anybody else have any comments, other auto dealers?

(No response.)

THE COURT: Nobody. Okay. What I would like you to do so that I have it is if you would formally file his resumé?

MR. BARRETT: We will be happy to do that, Your Honor.

THE COURT: I would appreciate it. I don't know how you get it on the docket, like a motion to approve or something.

MR. BARRETT: Yes, ma'am.

THE COURT: Just so we have a record that's open and available to everybody. It certainly sounds, sir, that you are more than qualified to do this, and I hear no objections so I'm going to approve it. If you would submit an order along with the resumé. I'm going to hold it for seven days so all of these folks who are here, if there's any question they all have the opportunity to ask their questions or file anything if there is an objection, I don't think there will be obviously but I think that's the proper way to do it.

MR. BARRETT: Thank you, Your Honor.

THE COURT: Thank you very much. Anything else before we go on to the motions? Anybody have anything?

(No response.)

THE COURT: Okay. We are going to start the motions then. Mr. Esshaki, you are free to stay or free to go.

MASTER ESSHAKI: Well, as I said, Your Honor, I have enough people saying bad things about me so I don't need to sit here and listen to them, but it was nice to see everybody again. I hope you all stay well, and we will see

you in January. Judge, thank you very much.

THE COURT: Thank you.

MR. TUBACH: Good morning, Your Honor.

THE COURT: Good morning.

MR. TUBACH: Michael Tubach. I will be presenting the argument on behalf of the wire harness defendants challenging Master Esshaki's order relating to two specific issues.

The first issue is the number of auto dealer depositions that the defendants will be allowed to take, and the second relates to whether the defendants should be required to provide an outline of topics of fact witnesses to the plaintiffs ahead of time.

Now, in both cases and in both of those issues we believe Master Esshaki misinterpreted your instructions at the January 28th conference regarding both the auto dealer depositions and the outline of topics. Now, the Court said it was only putting its two cents' worth in at that hearing.

THE COURT: I should learn not to indicate that.

MR. TUBACH: I think given all the briefing I think you may have undersold those comments. It is quite clear that Master Esshaki interpreted what you said as an instruction to him to allow only one deposition of each plaintiff, and it is pretty clear if you look at the May 26th transcript, which is Exhibit G of our motion, he says

there -- he starts talking about the template, the outline of issues, but he talks about both issues, and this is on page 7. "Now, with respect to the issue of the template I was attempting to follow Judge Battani's instructions at the January conference where she indicated a template for a deposition protocol should be prepared that can be utilized in all cases because auto dealers and end payors are going to be deposed only once."

Now, the problem with that is that's not what Your Honor said at the hearing, and I feel at a bit of an odd position to tell the Court what its intentions were when it was speaking, but reading the transcript, a fair reading, is what the Court was concerned about that any individual person, and primarily the end payor plaintiffs, would be deposed more than once, so they would be deposed about their car purchase in the wire harness case and in bearings and in windshield wipers and in anti-vibration rubber parts, and that I think is a fair reading of what the Court was concerned about. That issue has been addressed so now end payor plaintiffs are going to be deposed only once notwithstanding the fact that there are 31 separate cases filed here.

That's not what we're here to talk about today. What Master Esshaki did essentially was to take that two cents' worth from the Court and transform that into one

deposition for even a corporate entity, and we think that was in error. And it is quite clear -- now, he ended up modifying it because as a corporate entity there would be a 30(b)(6) deposition, right, as well as a fact witness, so he ended up saying well, you get one of each but only because he couldn't really square the nature of the corporate entities of the auto dealers with what he thought was the Court's instruction to allow only one deposition per auto dealer.

And if we were to let Master Esshaki exercise his discretion to determine how many depositions we should be allowed to take of the auto dealers we don't have to guess what he would have done, we already know the answer to that. At the -- prior to the January 28th hearing, on January 21st Master Esshaki got competing proposals from the defendants and from the plaintiffs, we had asked for more time, they had asked for less time, and he said okay, here's what you get to do, you get three fact witnesses, you get 18 hours of 30(b)(6) depositions per auto dealer. That's not a lot of time. Each of these auto dealers has filed many individual cases, you know, there are 31 cases out there now, and the auto dealers each have their own separate claim and that claim needs to be explored.

And some of these -- I know the auto dealers want to portray their clients as mom-and-pop shops but many of these auto dealers are really large companies, hundreds of

employees, with one -- Landers is part of a group that has $1.4 billion in sales annually. These are large companies some of them. And so the fact that Master Esshaki said you can take three fact witness depositions and 18 hours of 30(b)(6) for a class case that's lasting 10 to 15 years for everything the company does, that's not a lot of time, and it is not a lot of time particularly because the auto dealers sit at the crux of two very important transactions.

The first transaction is between the OEM and the auto dealer, and that is not simply a sale of widgets for a given price, there are all kinds of different aspects to that transaction that need to be explored; there are holdbacks, there are discounts, there are rebates, there are end-of-month sales, and you can't simply say well, they paid X for a car and that's what it was. And the reason why that's important is because the plaintiffs' obligation at the auto-dealer level is to show that any overcharge that any of the wire harness defendants imposed in the sales of wire harnesses upstream, that that overcharge they can trace that through to their purchase, and that's going to be true with every part.

And if there is an overcharge of -- we don't know what they are going to claim, $5, $10, $20, who knows, they are going to have to show that that $20 somehow traced through to the auto dealers' purchase of that car. We think

it is going to be very difficult for them to do that given there are thousands of dollars in holdbacks and rebates and discounts that are swinging back and forth. They may win, we may win, the Court shouldn't decide that now. All we are asking for is we have the opportunity to discover those issues. And so that's the first transaction.

The second transaction is probably slightly less complicated, I think most of us have probably bought cars, but there are lots of things going on with a car purchase also, it is not simply you walk into the 7-Eleven and buy a Slurpee; you are negotiating over the price, you are negotiating over financing, over trade-ins, all kinds of things that potentially go into a transaction like that, and so the auto dealers really sit at the middle of both of those transactions and in order to properly explore those we need to have a little bit of opportunity to do that.

So I don't think the Court indicated that we shouldn't have that opportunity at the January 28th hearing, and I believe Master Esshaki quite clearly thought we should have three fact witnesses and 18 hours of depositions because that's the decision he made after full briefing and a hearing. The plaintiffs keep saying well, that just goes to damages, damages, you don't really need to explore that, but I think what the plaintiffs and they try to do this -- I have been in a number of these cases, this is -- they try to

obscure the difference between damages and impact. Impact is an element of an antitrust claim, and what that means is -- that's also called sometimes fact of injury. And so in order to get a class certified the plaintiffs have to be able to show that every class member suffered injury in fact, that they were, in fact, overcharged. Now, there are cases that say that individualized questions of damages, the amount of that impact may not defeat class certification. We can argue about that later, but there is no case that says you don't have to prove impact on a common basis, and so that's what we are talking about here and the question is can they trace that impact from wherever it started between a wire harness defendant and a tier one supplier a couple chains up down through the OEM to the auto dealer and then down to the end payor, and that's what we are arguing about.

And so for us to say we need to do a little bit of exploring to try to get to that is not asking for a lot. They keep throwing out big numbers about how many depositions, how many hours, this is going to end the world.

THE COURT: Well, this is on your first set of depositions under this protocol so can you not go back to the master and say look at, we did your one deposition and this is how far we got, we need this other information? I mean, you know, this is the beginning.

MR. TUBACH: It is, Your Honor. I would turn it

around and what I would say is Master Esshaki in his discretion said we should have three fact witnesses and 18 hours --

THE COURT: Well, he didn't because he then had -- you filed briefs and he had meetings with you and in the end he came up with what he came up with.

MR. TUBACH: But the only reason he did that, Your Honor, is because he thought you told him to. That's not an exercise of discretion. I mean, what I just read for you is not him exercising his discretion, it is, as he put it, attempting to follow Judge Battani's instructions. So on a clean slate what Master Esshaki thought was that we should get three fact witnesses and 18 hours of 30(b)(6) depositions.

Let me just translate that into what this means for my client. They keep throwing out a lot of numbers about how many hours of depositions that's going to be. My client is Leoni, one of eight defendants in the auto dealer cases just in wire harness. We don't make any other parts, we didn't sell windshield wipers, we didn't sell any of that stuff. Translating all of those numbers back down to us means that in a multiple billion dollar case where the plaintiffs are trying to get from my client potentially billions of dollars in damages, the total number of hours allocated to Leoni, seven, that's how many hours Leoni gets on an allocated basis

to try to defend itself in this litigation from the auto dealers. That's not very much at all. I need to be able to explain to my client our -- that was our proposal that we would only take seven hours. The plaintiffs are saying you shouldn't even get that, you should get even less than that. And we suggest that notions of due process and basic fairness, Counsel, that we should get at least seven hours for my client to defend itself in this huge piece of litigation.

Unless the Court has questions about the auto dealers' depositions, and -- we think it is quite --

THE COURT: So you believe -- as I understand it, you believe that the master came to a resolution of three fact witnesses and 18 hours of 30(b)(6), is that --

MR. TUBACH: He quite clearly did. On January 21st he did, and the parties were in the process of memorializing that as -- I will use his term -- when the Court upset the applecart.

THE COURT: Gee, what can I do today?

MR. TUBACH: I know, it is like --

THE COURT: You will see.

MR. TUBACH: -- you are the Federal Reserve making a statement, everyone pays very close attention to it.

We appreciate the Court's effort to try to move things along and give us your thoughts. I think in this

instance what happened is Master Esshaki took what you said quite literally and was following your instructions when, in fact, those weren't your instructions, and on a clean slate he came up with a different decision a week before the Court had the hearing. So, you know, from our point of view we think we need these depositions. What I would suggest is we are probably not going to end up taking all of these depositions anyway, this is the outer limit of what we are allowed to take. What I would suggest to the Court is these are the caps, give us the three facts and the 18 hours, and if we don't need it we are not going to use it. Plaintiffs keep thinking we are going -- I really want to go to some auto dealer in -- I won't pick a town that somebody might be from, and just spend time there just because I can. That's not what we -- we have a lot to do, and we are going to do it as efficiently as we can particularly now that we have 31 cases all of whom are going to be deposing any single person only once.

THE COURT: 32 as of --

MR. TUBACH: Oh, there's another one, 32, maybe 33 by the time the hearing is over. We are not going to be wasting time. What I would suggest instead is turnaround what the Court suggested and say give us those limits and if there is any indication that we are abusing those limits, any indication at all, you can be quite sure the auto dealers

will vigilantly protect their clients.

THE COURT: Okay. All right.

MR. TUBACH: The only other issue I was going to mention has to do with this outline, the topics. I will just start by saying I have been doing this 25 years, I have never had anybody tell me that I have to give an outline of a fact witness deposition, even topics, to anybody else. 30(b)(6) depositions are entirely different, they are by definition different than fact witnesses, you have to give topics on 30(b)(6) depositions because the other side needs to know who to put forward as a witness. So if you say I want to know about your sales operations, they are not going to go to somebody who knows nothing about sales, they are going to go to somebody who knows about sales.

THE COURT: But what's wrong with doing it, what's wrong with doing it? You have got how many fact witnesses you are going to be taking, now you say you want three from each. What are you going to do, create some new idea when you sit down for your deposition? No, you are going to be basically following -- you are going to have your own outline you are going to follow anyway so why can't you give them the areas?

MR. TUBACH: It is not that we can't, Your Honor, of course we can. And I venture to guess if we ask them --

THE COURT: You think they are not going to know

generally what you are going to ask them anyway? I mean, what are we doing here?

MR. TUBACH: Well, if they are going to know anyway what's the point of us -- here's the risk. What is the point of us preparing this outline if they know and we know the topics that we are likely to cover, the only reason to do it is -- not the only reason -- the only result of it is going to be mischief because they are then going to say, ah, you know what, that question you asked I think that falls outside one of those topics so we don't get to ask it. If they don't have that right then what's the point of the topics? Fact witnesses by definition we can ask them anything that we want that is relevant, and it may very well be -- there still has to be some element of surprise left in litigation here. It may very well be that the defendants decide for any one particular witness to focus on a different issue, and that's our right. It is not rocket science, it is not great secrecy, we are going to focus on the things that are relevant, but in fact witnesses we get to ask the questions that we want to ask.

And plaintiffs for their part are having a hard time defending this outline idea for fact witnesses. The best the auto dealers could do really was to say well, if we don't have an outline ahead of time there is a risk that it is going to run over -- the deposition is going to run over

the seven hours because the witnesses will be confused about the questions we are asking. That's not a very good argument.

THE COURT: Okay. All right.

MR. TUBACH: Thank you, Your Honor.

MR. REISS: Your Honor, I don't know if you prefer a response from the plaintiffs to that or you want to hear --

THE COURT: I want to hear all of defendants.

MR. REISS: Okay. Good morning, Your Honor. Steve Reiss, I represent the Bridgestone defendants in the AVRP case, and we represent the Calsonic Kansei defendants in the radiators and now air-conditioning and ATF warmers case.

We have filed objections to Master Esshaki's ruling on behalf of 27 of the later defense groups, and let me just chime in two words on the points that Mr. Tubach has made. By the way, I think the location he was struggling for where no one would really want to go is probably New York.

Two points. One, Your Honor, I think it is absolutely clear that Master Esshaki changed his initial ruling which is made after full briefing and extensive argument where he said finally I think the fair thing to do is allow three 30(b)(1) depositions of the ADP auto dealers and one 30(b)(6) for 18 hours, that decision was made after extensive, full and careful briefing. And, Your Honor, the only thing that changed that decision was the Court's

remarks, I think that's absolutely clear from the record.

By the way, I would tell you from the standpoint of the later-filed defendants, 27 defendant groups that I'm here on behalf of, three 30(b)(1) depositions and one 30(b)(6) deposition for 18 hours is the bare minimum. I would tell the Court that I think that 23 out of 47 of the auto dealers sell more than one brand of car, so it is not like there is just a Honda dealer, 23 of those 47 auto dealers sell multiple brands.

THE COURT: Let's talk about what the master did though because I am concerned about him taking my words as this is the way it should be, okay, I'm concerned, but after that was there not a full briefing and hearing or no?

MR. REISS: There was, Your Honor, but the Special Master started that proceeding under the assumption that he had a directive from the Court, and honestly, Your Honor, I think he was struggling -- I think he literally interpreted the Court's directive as allowing only one deposition per auto dealer. He realized that was impossible because in addition to a 30(b)(6) deposition you obviously needed at least one fact deposition, so he struggled to get out from under what he thought the Court's view was and ordered the one 30(b)(6) and the one 30(b)(1) deposition.

I think it was absolutely clear from that hearing that he felt bound and constrained by the Court's remarks. I

was there, that was in my view, I'm sure the view of the defendants, plaintiffs may have a different view, but I think the record is absolutely clear that allowed to exercise his full discretion he awarded three 30(b)(1) depositions and one 18-hour 30(b)(6) deposition, that's what he did. He changed his mind because of the Court's remarks.

And as we said, we think that original, original order was the bare minimum necessary when you have 23 or 47 ADPs that sell multiple brands of cars, I think the majority are close to the majority of the auto dealers have multiple locations, we've got to be able to depose those folks. I think there are auto dealers with as many as ten brands of cars that they sell and as many as ten locations. We are not going to notice somebody from every one of those locations or brands, but clearly it shows why Master Esshaki's original ruling was the bare minimum necessary to allow the defendants to defend themselves.

I will say, I agree with what Mr. Tubach said on the provision of a deposition topic and 30(b)(1), I'm actually older than Mr. Tubach and been practicing longer and I have never seen that in my life and there is no reason for it. By the way, I would remind the Court the plaintiffs didn't even ask for it, they didn't ask for that, they also did not ask for the limitation of three defense counsel per deposition. And by the way, defense lawyers, we have no

interest, and I think Master Esshaki put it really well, they are very good lawyers in this case, Your Honor, there are very good lawyers on the plaintiffs' side, there are really good lawyers on the defense side, none of us have any interest in extending any deposition longer than necessary, that goes for the auto dealers, that goes to the end payors, but we do have an interest in being able to defend our clients, that's pretty fundamental. And I think it would be unusual if more than three defense counsel feel the need to ask questions but if a particular defense counsel in one of the 50 defendant groups says hey, I have two or three questions I really need to ask, this is my only shot, we don't want to be in a position of the plaintiff saying well, you have already had three defense counsel ask questions, you can't ask a question.

THE COURT: Well, the Court never addressed the number of defense counsel.

MR. REISS: Well, we objected to that, that was in the order, Master Esshaki placed a limit of three defense counsel per deposition.

THE COURT: I know but I'm looking at a breach of the standard here, which is abuse of discretion, so you tell me how that's an abuse of discretion?

MR. REISS: I think it is a clear abuse of discretion to the extent it denies any defendant group the

ability to ask any questions in a particular deposition. These -- Your Honor, we have now 32 but I think ultimately it is going to be more than that because we have seen the class notices that indicate there are two or three new cases coming down the line. We have 50 defendant groups confined to a very, very, very narrow number of depositions with the prospect that a particular defense lawyer will not be able to ask any questions, and I think that defense lawyer and that defendant group will have a very powerful argument that we were denied our rights, we attended that deposition, we had a small number of meaningful questions to ask and the order precluded us from doing that, it is a denial of our discovery rights, frankly it is a denial of due process.

I don't think we need to be in that position, Your Honor. Trust me, the defense counsel have no interest in being inefficient. We want to have these depositions go forward with one, maybe two, questioners, but if it becomes necessary because some lawyer for -- some defense lawyer for some defense group says I'm sorry, I really need to ask some questions given these answers, we have the right to do that, Your Honor.

And by the way, I will say that that limitation to my knowledge has never been imposed in any other MDL proceeding, any other antitrust class-action proceeding. Defense lawyers typically do allocate very carefully among

themselves but that limitation is, one, unnecessary, and two, has the potential to cause the denial of discovery rights and due process to any of the defendant groups who were shut out because of that limitation. So, yes, I have no problem saying it is an abuse of discretion.

I would then, Your Honor, address if I may the limitations on the end payor depositions, and Your Honor may recall what's not in dispute -- what's not in dispute is that the end payors only have to sit for one deposition. We have agreed to that. By the way, these end payors are folks who have chosen -- and I should drop a footnote here because many of these end payors are not new to class-action litigation. Nine of the end payors were involved in other class-action litigation, and I should note that 11 of the auto dealers have been involved in other class-action litigation, so they are not naive -- at least some of them are not naive to what class-action litigation involves.

The end payors will only have to sit once, the only question is whether they may have to sit for 7 hours or 14 hours. We have 50 defending groups with multiple parts, and let me make it simple mathematically for the Court. I believe, Your Honor, because I think it was the assumption in the courtroom generally that when Your Honor made the remark about one deposition per end payor, which we are not challenging, and seven hours because I think the Court said

well, they only just bought a car. I think the assumption, Your Honor, was one car, one car per end payor.

We know the facts are different because we've gotten discovery. The fact is of 55 end payors 44 have purchased two or more cars, 22 have purchased three or more cars, so the vast majority of end payors have been involved in multiple transactions, some as many as five or six, so the Court's initial instinct you only need one day per one car, fine, you know what, Your Honor, we can live with that, but most of the end payors have multiple transactions and we need to depose them precisely because, again, it is not surprising, their own records are not very good, most of these end payors have virtually no records about their transaction. We get some, some from the auto dealers but, of course, there is not asymmetry between the auto dealer plaintiffs and the end payor plaintiffs.

We have got to get records for the end payors from other sources, but even after we get those records, Your Honor, records are not the same as depositions, that's why they are different discovery devices. We need to be able to ask those end payors very detailed questions about their transactions because it is no secret, the defendants believe many of these end payors were not injured at all, and if they are not injured they have no standing and they can't be class members and there may be no class for those non-injured

plaintiffs. The Supreme Court has just taken cert on this issue whether you can even have a class where members of a class suffered no injuries.

So, yes, that's a very, very important issue for us and we want to be able to examine in detail each end payor who made the conscious decision to file 32, soon to be 33 or 34 or 35, separate massive class actions, and our request that if necessary each of these end payors sit for 14 hours of a single deposition instead of just seven given the massive burden they have imposed on every defense group in this room is hardly unreasonable, I would tell the Court it is the bare minimum.

Can I represent to the Court that we will take 14 hours with every end payor, of course not. I'm hopeful that we will take far less and maybe with the handful of end payors there are only a handful that only have one transaction at issue maybe seven hours would be more than enough, but with the 44 out of 58 end payors that have two or more cars at issue we likely are to need more than seven hours and we don't want to be running back to the Court and bothering Your Honor with requests saying we have two transactions, we need more time, here is why. It is not efficient, it is not efficient. Thank you, Your Honor.

THE COURT: Thank you. Plaintiff?

MR. RAITER: Good morning, Your Honor.

Shawn Raiter for the auto dealers.

I certainly speak for myself and the auto dealers very clearly, we have a lot more respect for what Special Master Esshaki did here in his process than what we just heard from the defendants. He did not do exactly what you suggested during the hearing. He had a subsequent set of proceedings, he used his own discretion and his judgment and he didn't award the defendants one deposition per automobile dealer plaintiff because if he were just blindly following what you said during the January 28th conference he would have said one, which is what the Court did in the Optical Disk Drive case for each set of the direct and indirect purchaser plaintiffs, awarded one deposition per plaintiff. He didn't do that. He stood up and he said we are going to start from scratch, I'm going to hear from you, I'm going to take submissions, I'm going to have conferences, and he issued a new protocol, and the defendants don't like it because it didn't give them everything they wanted, it certainly didn't give us everything we wanted, which was a single deposition, but in doing that, Your Honor, he exercised his discretion.

And this Court as an MDL court has an obligation to streamline discovery, that's why we are here, that's why the 1407 transfer talks about to promote the just and efficient conduct of these actions for the convenience of the parties

and the witnesses. An MDL necessarily involves streamlining discovery, it necessarily involves limiting discovery in a way that is different than if each of these cases were being litigated individually, which they obviously are not. The fact that we have consolidated-amended complaints took those 30 some auto dealer actions and put them into one complaint. If we were in a case where we had individual plaintiffs in each state suing these defendants for these conspiracies, we would have another situation where we would be faced with the defendants saying, whoa, whoa, whoa, hold on, you don't get to take our depositions 30 times across 30 cases, this is crazy, we need to only do this one time, yet when it suits them that's what they want to do with our plaintiffs, they want to treat our plaintiffs as if there are 30 some separate actions and they want to have all of these depositions because it suits them but, again, if you look at what you are supposed to be doing here as an MDL court.

The Duke University Law School has an interesting best practices -- MDL best practices position. MDL standard number one says that -- excuse me, the objectives of an MDL proceeding should usually include the elimination of duplicative discovery reducing litigation costs, saving the time and effort of parties and witnesses, and streamlining key issues. That's what the Special Master did here. He reached a compromise which was essentially a recognition that

these defendants have an enormous amount of information about the auto dealer transactions, about how they do their business, and about how they were impacted by these conspiracies.

We right now, Your Honor, I can tell you from the auto dealers' perspective feel we are being harassed by the defendants, that they are doing everything in their power to force our plaintiffs out of these cases. Every time we turn around we have another deficiency letter, another motion, they are alleging that we haven't produced this, we haven't done that, there are subpoenas going out by the hundreds to automobile dealers across the country and yet they come in and they essentially say you folks should be subjected to depositions for each dealership that would last more than a week of testimony, it would be several hundred depositions of auto dealer plaintiffs or witnesses. These would be depositions, 30(b)(6), 18 hours, take an enormous amount of time to prepare those dealers to respond to the topics.

And why are they doing that, what is it that they hope to gain? What they have already been provided, Your Honor, includes things like the following: They have received about a half a million pages of documents from dealership plaintiffs, the class representatives, those include acquisition documents, downstream documents, rebates and incentives from the OEMs, communications from the OEMs

about various promotions and incentives made available during the class periods. They have received DMS data, that's Dealership Management Data, which is an electronic system that both dealers use to report back to OEMs and vice versa. The DMS fields that we have negotiated with them to produce are over 200 fields of information for these dealers.

As of today or by the end of today we will have produced that data for 40 of the dealerships. Just so you know, what that information is is things like the VIN number, the price, the sales cost, the model year, the rebates, incentives, warranties, trade-ins, financing and insurance purchased with the vehicle all broken down on a vehicle-by-vehicle basis. Again, if the defendants want to talk about well, what did you do and how did you do it and how were you impacted, and did you make a profit or didn't you make a profit, or did you sell a warranty or insurance, they are getting all of that in the DMS data. They are getting it in the acquisition and downstream documents, the half a million pages we have already produced.

We have responded to interrogatories about certain questions they have asked. The parties are negotiating and issuing subpoenas to the OEMs. Again, what information is being sought in those subpoenas to the OEMs? Well, it relates to a variety of dealership cost issues, things like taxes, legal, salaries, advertising, mortgage, rent, credits

from the factory, sales figures, profitability and various other pieces of information about how dealerships do their business. Again, each of the OEMs at issue are receiving those subpoenas, those are negotiated with court supervision and the parties have that process underway.

So ultimately you stand back and you say well, what purpose would be served by taking more than the two depositions than they have already been allowed, and how is it an abuse of discretion for the Special Master to say start with two because his protocol does say we can always come back to the Court, of course, but how is it an abuse of discretion given all of this information, the best evidence about these transactions will be in the defendants' hands before these depositions. You are not going to be able to ask any of these witnesses about a particular sales transaction and expect that they have independent recollection or knowledge of that transaction. What they are going to do is go to the documents and say well, for that VIN here is what happened, here is what our documents show, here is what the information shows, and they certainly can spend two days with these dealerships asking questions about what does this mean and how do you do this and why do you do this and all of these questions they want to ask about impact which, by the way, the standard that was suggested earlier is an improper standard, we don't have to show impact at every

transaction.

But with that said, what else do they need and how is it an abuse of discretion? They simply come and say, well, there is just so many of us we have so many questions, but if you look back at the limits placed by the Special Master in the deposition protocol that applies to the defendants what do we have there? Let's look at that. Well, what it says is that the plaintiffs groups collectively, collectively all three of us can take up to 15 depositions of each corporate defendant family, so essentially we each get five, and these are the people who actually conspired, went to jail, pleaded guilty, there are many more witnesses involved on their end yet we collectively get 15.

On the 30(b)(6) topic the defendants are asking for only three hours less of 30(b)(6) time of our people than we get of theirs. So they want nearly the same amount of 30(b)(6) time as the plaintiffs collectively get against any one of their defendants. It simply doesn't make sense. And if you look at, again, the protocol and how we got here, in January 2015 parts were still in these cases. There was a question from the Court about well, are parts in this or not, and you had a discussion with counsel for Sumitomo about that and whether that might change something. Parts are now out. So what we have are the acquisition and sales of new vehicles, and fundamentally what they are asking for is

abusive discovery quite frankly.

Yes, Landers is a large group. Many of these are single dealership locations, they are not large businesses, and asking them to sit and put their people up for a week of testimony, we would be doing depositions of auto dealers for a year straight, one year straight if they were running consecutively. Does that make sense? Well, their question is well, there are multiple brands, multiple OEMs. Well, we all know there are only so many OEMs, right, there are only so many OEMs in this litigation. Some of the dealers, of course, sell the same types of vehicles so there are multiple GM dealers, there are multiple Honda dealers. The fact that those dealers are getting the vehicles from the same OEM, the same process, at some point you really say you have taken one Honda deposition, you have taken them all in some sense.

Now, there may be again some individual issue that they want to ask about, something that is different and unique to a particular dealer or a particular state, and that's fine, that's why they get two depositions of each one of these dealerships, but right now what the Special Master did was reach a very reasonable compromise, given the status of the litigation, given the number of defendants left in wire harness, remember we don't have the same number of defendants anymore, it just doesn't make sense, it would be abusive, it would be a huge waste of time.

THE COURT: How about the outline of the topics, what do you have to say about that?

MR. RAITER: Your Honor, it is an interesting question. If the purpose of these depositions is to get answers to the questions that they wish to ask, having those outlines ahead of time would be helpful because we could be sure that our people are prepared and have the information hopefully to answer the questions. So do we have to have it from my perspective, no. Would it be helpful in moving the process forward, yes. Does it make sense, yes.

THE COURT: What if questions come up that weren't on the outline and you are in the deposition and you say, oh, there is this issue, just came up?

MR. RAITER: I personally, Your Honor, think there's always some degree of reasonableness and discretion, and if a lawyer has to stray from the outline a bit if I were sitting there in the chair defending the deposition I would be hard pressed to hold that lawyer to the outline assuming that these are reasonable questions that are relatively related to the topics on the outline. I don't think any of us want to be in here bothering the Special Master or bothering the Court based on a particular question at a particular deposition. But from a big-picture standpoint if you wish to streamline this and if they, the defendants, wish to have the information provided to them in a deposition it

would be good to know what is going to be asked of a particular witness.

We can then ask the witness whether they know these answers, we can figure out whether they are the right witness, we can do the work necessary to streamline the process, give them their chance, give them their due process, but not spend a ton of time wasted with people not recalling a particular transaction. I mean, that's the problem here, these dealerships sell thousands of cars so if somebody comes in and says well, I want to talk about this Honda Accord that you sold in 2009, most likely the dealership witness is going to stand there and say I have no independent recollection of that transaction, I'm happy to look at the documents and try to answer your questions, and if they have questions about notations or acronyms or things like that it would be good to know ahead of time so our witness knows, yeah, I know what that acronym means and I can tell them what that means, I can tell them what these documents actually say, I can tell them about this transaction if I know the types of questions they are going to ask me.

The last point, Your Honor, the number of defense lawyers questioning. Again, from the auto dealers' perspective it seems reasonable to limit it to three, again, both on the plaintiffs' side you require coordination, you require the lawyers to work together and try to minimize

duplicative discovery and questioning, it is common on the defense side that you ask the same from them. How it is an abuse of discretion to allow three but not four or not five doesn't make sense to me. I think the Special Master, again, reached a nice compromise here, he looked at it and probably thought if you all can't amongst yourself figure out all the questions that need to be asked and allow three lawyers to do so we are going to have a much larger problem as the depositions start.

So unless Your Honor has questions, we believe that the Special Master clearly exercised his discretion, there was no abuse of discretion. The number of depositions for auto dealers should be one 30(b)(1) and one 30(b)(6) as he ordered. Just so I'm clear, that's not what I would like but I don't think he abused his discretion in so ordering. We think there should be one deposition but we are not here challenging his ruling. Thank you.

THE COURT: All right.

MR. WILLIAMS: Good morning, Your Honor. Steve Williams for the end payors.

And, one, I want to join Mr. Raiter in saying I'm somewhat surprised at the attacks on the master in the briefing and the argument. I don't think there has ever been a deposition protocol that has had the history of negotiating, briefing and argument that this one has

including briefing and argument after we saw you last time, Your Honor. And I'm not always happy with the Master's rulings but I understand he makes rulings and you live with them, and I don't think there is anything that he did in his rulings that's unusual or inappropriate.

I think on a lot of the issues we talked about Your Honor made a very good point, which is if the limits aren't working for you, number one, before a particular deposition you have the right to ask for more time if you think you need it, and number two, if you go forward and it turns out it is not working well then you can come back then and say you need more time, but to say now that these things should be expanded, and I'm talking for the end payors, okay, so these are people who went to a car dealership and bought a car, they are not people who went into a car dealership and said I would like to talk about the wire harness now, tell me about that wire harness and how much did that cost, and tell me about the heating control panel, they bought a car. And to suggest that 14 hours of time is necessary to ask about that car purchase is crazy and, you know, we are kind of focused on details and Mr. Tubach when he was arguing made a point about how the plaintiffs tend to mix up damages and impact and they don't focus in the right place.

I would like to focus on the fact that there's a conspiracy or a set of conspiratorial conduct that went on

for 10 or 12 years that affected almost every vehicle that came out of Japan, but the witnesses and the people who engaged in that conspiracy when I take their deposition I get seven hours to ask them about that 10- or 12-year conspiracy, and they want 14 hours to ask my client about when he bought his Toyota Camry. It is preposterous, it makes no sense. I don't care if he bought four cars, two hours of time to talk about your car purchase is a form of torture that most people shouldn't have to go through.

You know, I heard these comments and I didn't quite understand what they meant. These are folks who have chosen to file this suit and they are not naive so --

THE COURT: Are they professional plaintiffs?

MR. WILLIAMS: No. I don't even know what that word means. They certainly are not people who pled guilty to violating the antitrust laws. They bought a car and they brought a claim. It is an irrelevant point. I don't know if it is supposed to incite somehow that they are bad people but they are not felons, unlike most of the defendants in this case. So there is no tainting or suspicion that my clients bring into this that justifies this extra time they are asking. The time they have got is more than enough. If there's any special circumstances they can raise it beforehand or they can raise it after the deposition, but there is nothing to justify 14 hours of time to talk about

buying a car, period.

The alleged lack of records. First of all, they are subpoenaing all the dealers to get all the transaction files. Second of all, how does that justify more time? If I don't have records what are you going to do, ask me for four hours can you remember any better now that I have asked you the fifth time what the terms of the deal were? It just doesn't make sense.

And then we heard about the massive burden our clients have imposed on the defendants. Our clients didn't engage in these conspiracies. Our clients didn't impose heightened costs on virtually everyone who bought a Japanese car for the last 15 years.

So I always start with Rule 1 and we are going to talk about Rule 1 later of the Federal rules, and the part that I focus on isn't the speedy and expensive, and those are important, I focus on just and justice, and that's what this case is about. And every time we come in here from every different direction there are shots taken at us like we are the bad guys and we did something wrong, and that's not how this should be. In fact, on the speedy and expensive, it is up to the Court and the Master to put procedures in place to focus discovery, to limit costs, and that's exactly what the Master did and that's now what they are complaining about.

So, first, the finger pointed at us for putting the

massive burden on the poor defendants over here, and then Master Esshaki got it wrong because he won't give us more time to ask questions but take our word for it, we will be judicious with it.

I brought the manual on complex litigation, I understand that's what Federal courts frequently look to, and in the section on depositions for the supposedly unheard of idea of how many people can question, it says courts can issue guidelines about who may examine witnesses, it is right out of the manual, that's not novel, that's the job of a court presiding over multiple-district litigation to focus discovery on issues in dispute and to manage it in a cost-efficient manner. And frankly I don't have as much experience as Mr. Reiss or Mr. Tubach, I'm closer to Mr. Tubach, it is almost unheard of that more than one defense attorney examines a class rep at a deposition. It is not a denial of due process to say coordinate your questions beforehand, you all know what you are going to ask, there is no unique question for part A versus part C. We have to do the same thing when we examine their witnesses, we have to coordinate, we have to not repeat ourselves.

And the suggestion was made that this somehow came out of nowhere, Master Esshaki made it up, that's not true either, this limit, it came out of the discussion about us wanting protection against repetitive and duplicative

examination by sort of a tag team, one attorney asked the questions and then the next one does, that's where it came from, and it is justified and it should be upheld.

Finally, on the list of questions, it kind of ties together to me. They are saying they need 14 hours, that's preposterous. They are saying they have all of these issues they need to examine on, well, in that case what the outline does -- it is not a list of the questions, it is an outline, and it helps us prepare the witness to answer their questions so that their time is meaningful. There is a benefit to it, if they ask something outside of the outline, you know, the objections are what the Federal rules let us object to. I'm not going to tell a witness not to answer because it wasn't in the outline but it is a tool, a helpful tool, to make the depositions more productive so that we are not wasting time and wasting money on these depositions.

The reality is, I think defendants will admit it, and I will admit it, and the Court knows it, most of us know what we're going to be asked about at the class rep deposition, but there are things they want to know about and they complain you don't have your records so we can't go by those. It is a helpful tool, that's all it is, it doesn't hurt, it doesn't deny due process, there is really no harm here but I think in sum, if any of these horrible things they think are going to happen in reality take place then they

know where to reach the Master to bring that up again, but for now this order is perfectly appropriate to manage this case. Thank you.

THE COURT: Okay. Thank you.

MR. TUBACH: Your Honor, briefly in response. Michael Tubach again for the wire harness defendants.

To be very clear, Your Honor, there is no attack on Master Esshaki at all here, and I hope the Court hasn't taken anything that any of us have said as an attack on Master Esshaki. I think he was doing his levelheaded best to do what the Court -- what he thought the Court told him to do. The Court raised the issue that well, after that hearing you know I did tell him that I wasn't trying to tell him what to do, but to be clear, that transcript I read earlier on May 26th was after the Court had held its status conference -- to set the stage, January 21 he issued his ruling, January 28th the Court upsets the apple cart with its two cents, May 6th there is another case-management conference where the Court said maybe I overstepped my bounds, I don't mean to be telling the Master what to do, and thereafter Master Esshaki had a hearing at which he said I was attempting to follow Judge Battani's instructions. So despite the Court's best efforts not to give him instructions it is real hard for a Special Master not to take very seriously what he thinks the Court has said he should be

doing. We are not attacking, we simply think he got it wrong.

With regards to the Optical Disk Drive case, Mr. Raiter simply misspoke, the direct purchaser corporate defendants I believe they got 15 -- there were 15 fact witnesses and five 30(b)(6) depositions that they were allowed to take for corporate representative, corporate entities, and that make sense because you have a large organization and you need to try to discover facts from this large organization. We are not asking for anything close to 15, we are not asking for anything close to five 30(b)(6) depositions. What we are saying is we should get one 30(b)(6) of 18 hours, so one substantial deposition of 30(b)(6), and three fact witnesses, that's all we are asking. That is in no way comparable to what the plaintiffs are getting from us, we are putting up 15 witnesses, other than Leoni we have been given fewer, other defendants are putting up 15 fact witnesses, which is five per defendant group, that's considerably more.

What I heard a lot from Mr. Raiter is we are somehow harassing the auto dealers in this discovery process. Nothing could be further from the truth. They have been dragged kicking and screaming into this discovery process. They have not been diligent in pursuing discovery and in fulfilling their discovery obligations, and that's not me

talking, that's Special Master Esshaki talking, he has said that. And so when the auto dealers are complaining that we are trying to enforce our discovery rights, yeah, we are trying to enforce what we are allowed to do and what Special Master Esshaki has ordered them to do and that they have not done.

What they neglected to tell you in the many documents they have produced is that for a lot of these auto dealers they have produced very few years' worth of data or documents and yet they want to cover a 15-year period. This is not a complete production of documents by any stretch of the imagination.

I heard a lot about we really shouldn't be bothering with any of this because we conspired, pleaded guilty and went to jail. That's not how the Federal Rules of Civil Procedure work. And just to be clear, my client has not pleaded guilty to anything. We have been dragged into this litigation and we are getting under our own proposal only seven hours to defend ourselves from this multi-billion-dollar litigation, that's not a lot, but frankly it doesn't matter whether we pleaded guilty or not, even defendants who have pleaded guilty are entitled to rights, they pleaded guilty, they have paid their fines, and now they get to decide did, in fact, what they did cause impact to people several streams -- several layers down the

chain, and that's what we are entitled to do.

The only thing I would say about the outline and the topics, I promise the Court no good will come of this. Forcing the defendants to give an outline of topics to be covered will only result in problems, and it is a solution looking for a problem, there is no reason for it. If the Court is inclined to do it, which we certainly hope the Court is not inclined to allow that, then it should be reciprocal. If we are going to have to give them outlines of topics for our witnesses so that their witnesses aren't confused by the questions we ask them and we don't run the risk of running you over, well, then they ought to give us outlines for all of the fact witnesses they want to question us about. We don't need it, we just don't need it.

THE COURT: Okay.

MR. TUBACH: Thank you very much.

THE COURT: Counsel.

MR. REISS: Thank you, Your Honor. I don't want to try to prolong this. Let me just second what Mr. Tubach said about being in this courtroom because I know Your Honor knows this but frankly it is a little bit difficult sometimes. I will tell the Court two things about the big picture. The first is that the majority of the named defendants in these cases, the majority, have not pled guilty to anything. Okay. So they are -- they walk into this courtroom as every party

walks into this courtroom, without any preconceptions about whether they have done something right or wrong, whether there is a class or not a class, whether the plaintiffs have been injured or not, those defendants as with the defendants who have pled guilty are entitled to defend themselves.

And let's have another major sort of reality check here. This litigation, which I think the one thing that everyone is in agreement with Your Honor is I'm the oldest guy standing up here, so this litigation is structured in a way that is unprecedented, and it is not because the defendants have done it, the plaintiffs, both the auto dealers and the end payors, have chosen to put together in a totally unprecedented and frankly, my own view, improper fashion, so this isn't one case. Mr. Raiter I think said this is one case; no, it is not, it is 32, soon to be 33 or 34 or 35 major sets, not even individuals, sets of class action. Does this litigation have to be structured this way? Absolutely not.

Your Honor, there were a number of class actions -- antitrust class actions involving computer parts, six different separate MDLs all went to the same District Court in California, the Northern District of California. Six separate parts, six separate MDLs, every plaintiff in every one of those separate MDLs was deposed.

The notion that we are --

THE COURT: Separate judges?

MR. REISS: Separate judges, Your Honor. Very good. Six different judges in the Northern District of California. SRAM, DRAM, LCD, CRT, Optical Disk Drive and Capacitors, every one of those was a separate MDL even though every one of those parts are in computers, all went to the same district, all went to different judges, precisely to avoid some of the problems we are standing here encountering. There is unreality to the notion that I am begging for 14 hours of a plaintiff who chose -- I'm not casting aspersions on the plaintiffs but the fact is they chose to file 31 or 32 suits. No one -- they didn't drop from the sky, they were presumably informed about their obligations as class representatives, they were presumably informed that meant they were going to be deposed. I don't know if they were told they were going to be deposed in 1, 2, 18, 30, 32 cases but the fact is they are only going to be deposed once in 32 cases, and all we are saying is we don't want to depose them any longer than we have to with the end payors or with the auto dealers, but if an end payor bought five cars, and some of them did, yeah, we are going to need more than seven hours, and if they bought two cars we may need more than seven hours, maybe not. And by the way, a lot of these cars involved parts that were optional, there's a lot of stuff we want to ask the end payors about.

I did want to make it clear to the Court that we are here in this litigation as it is structured because of the choice the plaintiffs have made. And by the way they say we have so many plaintiff depositions, we have so many, they could have brought the case with 10 plaintiffs or 15, no, but they chose, they chose, to file these cases with 57 end payors and they chose, they chose, we didn't choose, they chose to file these cases with 40 some odd auto dealers, that's why we are here. And the notion -- I think Mr. Raiter said well, you depose one Honda dealer you depose them all. Really? We don't agree with that because we think every Honda dealer may have different deals, relationships with its OEMs, they may have different relationships, different deals with their end payors.

By the way, they also compete against each other so an end payor who tries to buy a Honda Acura from one dealer may get one offer and they may get a very different offer from another dealer, and we want to understand why that is. And if they went to the dealer with the better offer then maybe they weren't injured and if they were injured they can't be a class rep because they have no standing. You don't have to agree with us, all you have to do is agree that we have the right to find those things out to defend ourselves.

THE COURT: Okay.

MR. REISS: Thank you, Your Honor.

MR. WILLIAMS: Your Honor, may I speak briefly?

THE COURT: All right.

MR. WILLIAMS: A couple things. There has been a lot of crazy math, seven hours that they only get, the majority of defendants have pled guilty, and I don't know if that's sort of the -- there are five corporate defendants and one took the plea for the rest of the family so you are counting those other four, and I don't know if it is the guys who pled in Japan or paid a fine in Japan and didn't plead here, but no one should accept this suggestion that there is not a lot of misconduct on this part. Even Mr. Tubach who said I didn't plead guilty, well, he did pay a fine in Europe for collusion.

I want to talk about those cases in California because I know these cases very well. Number one, they were not all treated separately precisely to avoid whatever this problem is that was referred to because I don't know there is a problem here. I actually think we are doing a good job here, we are managing this, and we have put together this case that is complex not because of what we did but because of what they did in a good way because here is the difference. In LCD, liquid crystal diode TV, if that's what LCD means, doesn't have a catheter ray tube in it, those are two separate conspiracies, you can't put them together. That

LCD does not have an optical disk drive in it, two separate conspiracies, you can't put them together. That does not have a DRAM chip or an SRAM chip in it, separate conspiracies, you can't put them together.

My guy bought a car, my guy bought a Honda with a bunch of those price-fixed parts in it. It does belong together. And frankly as Mr. Seltzer pointed out, no disrespect, he may be the oldest attorney in the room, he's never seen a class rep deposition that went on for more than seven hours, and there is no reason for it here, there is simply no reason. Thank you.

THE COURT: Okay. Thank you. All right. I have to tell you I read with great interest the pleadings that have been filed here -- or the briefs. Let me start by saying, we are a little late into the game to talk about this should not be one case. I don't know if it should be or not, I told you in the beginning I had no class action -- or multi-district, excuse me, experience. I tried to find other cases because you all cite in your briefs this is what happened in this particular multi-district litigation and this is what happened in this other multi-district litigation, and when I go to look at those pieces of litigation none of them are like this, this is I think -- it is unique, at least it is unique to me because I haven't found one with so many parts.

I feel a little irresponsible when I might be at a conference and say oh, you have only 200 cases or something in your MDL, you know, we've got 1,000 or 1,500 or some other humongous number and I think this isn't so bad, and then I come back and I look at it and I say wait a minute, this still is different, so we are trying to deal with a creature that is new, and I think that both sides have done a tremendous job. I do not think that defendants are maligning the Master, I think you are presenting your side of this very interesting and important argument. And the Court looks -- you talk about this, how this case is structured, well, this is how it was given to me so you kind of come in with it, and it just became this creature, but we are dealing with this structure, we are not changing the structure of the case so now we simply need to look at what's the best way of handling this kind of structure.

I am very intent, and defendants might not appreciate this in this particular motion, but I'm very intent on respecting the jurisdiction, so to speak, of the Master. You have to show me in this motion that he abused his discretion. The abuse of discretion you are talking about is that he thought he had no discretion because of what the Court said. I went back and reviewed those transcripts and I can certainly see your point of view. However, where I differ with you is after the Court's discussion he had other

hearings and briefing and obviously didn't follow what the Court said because he allowed two depositions instead of the one deposition. And, you know, I think it was also fairly clear when I was talking about this I wasn't even thinking of the auto dealers, I was thinking of the end payors and some poor soul who bought a car or the poor richer soul who bought five cars had more depositions, I mean, I just think that the Master was trying to deal with what he saw as guidelines of the Court, but I don't think that him even considering that is an abuse of discretion. He considered it and he didn't abide by it.

There is no problem in my mind with his number of depositions. Yes, he might have had more numbers in January then he did after the Court's discussion, but it is what he decided. The -- I think the number of depositions it may turn out are not adequate for the defendants but you have the right to go back to the Master, you have the right to go back to the Master and say -- I mean, even before your depositions, you know, here is the outline that we did and we need this information from one person and we can't -- or else we can't possibly get it down in the number of hours, I don't know, there are any number of circumstance and I fully expect that you will be back at the Master.

So as much as even I -- I'm not saying I want to, I don't want to put my two cents in again, but if I may have

done it differently, if I had first considered your briefs and that I may have, but we have a certain protocol we are going to follow here with the Master because it is important to do it now and for the whole case, and I really cannot say that it is an abuse of discretion to limit these depositions as he has limited whether or not he used the Court's info as a guideline.

In terms of the outline of the topics, I know this is not generally done for the fact witnesses. I don't see -- I mean, it was interesting, it was almost like we were getting into a Constitutional argument here and, I mean, I don't see it right now, I think that these outlines because of the number of depositions, the number of parts, the structure of the case, taken all of those things into consideration I think that we have to be innovative so this may be a new thing with giving this outline but I think it is well worth the try, certainly it is not an abuse of discretion.

In terms of limiting the number of attorneys who can question a witness, again, I don't think that's an abuse of discretion. I mean, we do it here in trial, sometimes you have to pick one attorney that's going to be the person to question the witness with multiple parties, be it plaintiff or defendant. It is, of course, allowed for the 30(b)(6) issues for very good reasons. It may cause -- it may cause

some problems and I hope it is not true that no goodwill comes out of it but it may be, but then it will have to be altered, you can go back and say now we have this experience and this is what is not working in this protocol.

So the Court in reviewing this finds that the master has not abused his discretion and I will adopt the protocol or the protocol stance as he has entered it. Nobody is trying to limit your right to go back to the protocol with the Master and if there's objections to bring them to the Court. Okay.

Let's go to the next issue, which is the bearings class cert. I think we have both the bearings and the anti-vibration rubber parts.

MR. KESSLER: Yes, Your Honor.

THE COURT: Let me move this stuff out of the way.

MR. KESSLER: Good morning, Your Honor. Jeffrey Kessler, I represent in connection with this motion the NTN defendants, and I will speak for the entire bearings group with respect to this issue.

I should note that no member of the NTA group is a felon and prefer not to be called that since it is not true.

Your Honor, we are operating with the premise of the Court that this is a new creature what we have in this MDL. And I'm also operating from the premise that I heard advocated by plaintiffs' counsel focusing on Rule 1 that the

Court's obligation is to have a speedy, inexpensive and just way of moving this case forward, and the Manual for Complex Litigation and the MDL procedures which is also designed to streamline and find the just and efficient way to move this new creature forward.

What we propose with respect to the bearings track and also very similar to what the anti-vibration rubber parts have proposed is to find a way to manage this MDL in a way that will make sense for the Court, that will make sense for the defendants, and frankly we think makes sense for all parties including the plaintiffs as well and, in fact, one part of the plaintiffs' group agrees with us, which is that the direct purchaser class has proposed a schedule almost the same as ours, there are a few internal deadlines that are a little different which we can certainly work out, but they agree with us that the type of schedule we are proposing is the correct one.

Now, how should Your Honor decide this? I think Your Honor has to look at this from three different perspectives. Perspective number one is the objectives of the Federal rules and the MDL rules; will this proposal lead to a speedy, inexpensive and just resolution? Number two, from the perspective of the Court, will this schedule help the Court manage the MDL, and will it help for the overall group of defendants in terms of moving forward and the

plaintiffs as well? And number three, will this be just and provide due process to the parties, including the defendants who we represent? So I want to focus on from those three different perspectives.

Before we get to those three perspectives though there are some important things to note about bearings that's different. It is very interesting, Mr. Williams is talking about, well, he just has an auto parts case, he only cares about auto parts. The bearings case is the only case that involves industrial parts, industrial bearings as well as auto bearings. We are going to have unique issues unless there are future industrial parts that come up in some of the other cases. So the idea that somehow wire harness is going to tell us something about the industrial parts in bearings doesn't make any sense at all, so we are unique in that regard.

As I mentioned, the direct purchaser class has joined us in saying bearings are different from wire harnesses, bearings have different issues, they have different markets, they have a different alleged conspiracy, and no overlapping defendants of wire harness, we don't have a single overlapping defendant. I'm going to call -- we talk about the elephant in the room, I'm going to talk about the Denso in the room. Okay. There are lots of cases that involve Denso, and this is not one of them, okay, and there

is absolutely no connection between the bearings case and the wire harness case on any of these issues.

Number two, as I mentioned, the direct purchasers agree. Now, what the indirect purchasers have said, the EPPs and auto dealers, is they said okay, let's have different tracks for the direct purchaser class and for the indirect purchase action. Now, that would make the least sense of all. The one thing Your Honor would not want to do is consider class certification separately for the direct purchaser class and the indirect purchasers because the overcharge issues completely overlap at each level. There are different issues as you go down the level in terms of passthrough, which is very, very important, but the overcharge issues completely overlap for bearings.

Now, what they don't overlap with, and I'm going to come to this when we talk about managing the MDL, the overcharge issues in bearings will be entirely different from the overcharge issues for wire harnesses, okay, because it is a different alleged conspiracy, it is a different type of part, it is a different magnitude of alleged overcharge, all of which is going to affect the class analysis as I will come to.

So when we are looking at this we then turn to how should we do this? What are the competing proposals? And this goes to the management of the MDL. Our proposal is that

the Court will benefit by having three parts, wire harnesses, bearings and anti-vibration rubber parts, on approximately the same track because each one, which is very different from the other, will give the Court different factual perspectives in considering what's going to be the crucial class motion issue. One of the most important decisions the Court will make in this unique animal is class certification, and class certification has to be decided in each case but we don't fool ourselves, we know your first decisions are certainly going to have an impact on all the other cases, even though they are all unique it is going to have an impact, so the Court has to decide before making that first decision do I want to look just at a narrow single product that might have unique characteristics that don't apply to any of the other products that could be at issue here such as wire harnesses? Or would the Court benefit from considering -- you can't consider 32, Your Honor, but you could consider three at approximately the same time to see, for example, my prediction is they are going to have the same expert but their expert analysis might yield one result for one part and a different result from a different part, and looking at how that intersects together may tell the Court a lot about how reliable is this methodology, which is something you are going to have to consider under Daubert when you make your class certification, the Supreme Court has indicated others.

You will be looking at Daubert issues on their experts, you are going to want to see how the methodology plays itself out on a few different examples. And the fact that bearings has industrial products which has its own set of issues is another reason to consider it early because that's also going to be looking at how the overcharge is calculated, does it work in that context or not, how is this put together, although we also have bearings to auto parts as well so we are in both pieces in terms of this.

So we believe from the standpoint of overall administration of this unique animal, having three makes sense. Now, what is the schedule we propose? We haven't proposed some incredibly aggressive schedule, we would allow the Court to reach class certification rulings in bearings, in anti-vibration rubber parts and in wire harnesses around the middle of 2017, and that will be five years after our case has been filed. Okay. Your Honor, yourself, has said I would like to get more cases on board for 2017. Well, we have two volunteers, bearings and anti-vibration rubber parts, who have said we want to be in that schedule because under the Federal rules and our rights we don't want to sit in this courthouse for years and years and years, and Your Honor doesn't want to if, in fact, these classes are not going to be certified. And we have reason to believe in the end we'll be proved right or wrong that these classes may

never be certified when they get down to it.

And what plaintiffs would like to do is they would like to just keep this in limbo. I'm sure they would be happy if the Court didn't decide class certification until a decade from now because what they have is they keep the uncertainty and the discovery going and the expense and the effort that everybody is doing but we are all entitled to know under Rule 1 is this a valid class action or not, and we are asking for that determination in five years.

THE COURT: Okay. Let me just ask you this, you are asking to add to wire harness, bearings and anti-vibration rubber parts?

MR. KESSLER: On approximately the same schedule, not add them but to combine them.

THE COURT: Now I understand that.

MR. KESSLER: Right.

THE COURT: And a number of the other defendants have filed, you know, notice that they agree or basically --

MR. KESSLER: Here is the situation, Your Honor, they will speak for themselves. The other defendants have all indicated to us that they have no objection to our going on this schedule and they are not objecting at all. What they have said is the plaintiffs proposed as the alternative, that's why I said you have to look at the alternative, they propose moving us and moving I guess anti-vibration rubber

parts, I'm not sure if they are moving or not, but at least bearings into a group of six that would be heard together as six, okay, sometime I think the minimum is six months after Your Honor rules in wire harnesses we can first file our motion. And what the others are saying is wait a minute, they don't know if they can go on that schedule, they don't know -- they haven't spoken to this, the other five defendants have their own interest, and that's one of the problems, we are ready to go, anti-vibration is ready to go. If heater control panels is not ready that shouldn't be a reason to hold us back into 2018, 2019, 2020 waiting for some other case.

I will give you an example of this. So a new case was filed yesterday, Your Honor, on an amended complaint in the air-conditioning case, and in the air-conditioning systems case there is a footnote that says plaintiffs now believe that air-conditioning systems may be related to heater control panels and they reserve the right after discovery in that case to decide it is all one conspiracy. Well, what does that mean? That means the heater control panel case, which is one they want to put in the next six, may be delayed for years while they are trying to figure out in the discovery whether it is a separate conspiracy they are claiming or one that is integrated with air-conditioning systems where they just filed an amended complaint and you

haven't even had motions to dismiss or answers or anything, it was just filed yesterday.

This is an example why Your Honor I think has to look at each part track separately to decide what schedule they can meet because each one is going to be different, but then you should say would the Court benefit by having three on this -- I'm not even going to call it a fast track, three on a reasonable track to mid 2017 because it is hardly fast. The only reason frankly that we can think of why plaintiffs oppose this, okay, is because plaintiffs' view is that they don't want to prosecute three actions at around the same time I guess because it's resources, it's attention, whatever it is.

Here is the problem, Your Honor, look at that nice group over there, incredibly competent lawyers, the bench -- I say you have a big deep bench, I got nine rows deep of competent, incredibly smart good plaintiffs' lawyers, they can't proceed with three of the tracks out of the 32 they've chosen to file? If that's true, Your Honor, then this creature is not living, this new creature that they've created. For this creature to live, if you could rule approximately -- Your Honor may decide to rule a decision on one first and then one second or third, but the point is, Your Honor, if you have all three records before you, if you hear from the experts in bearings, the experts in

anti-vibration rubber parts, the experts in wire harnesses, all of these different experts and you have that perspective, and you look at it, then your first three rulings may be truly informed on looking at this and Your Honor said this is a unique animal as to what is the right way to do this. So we believe the only thing that makes sense from the standpoint of the Federal rules, from the MDL management and frankly for justice to our -- my non-felonous defendants as well as the others is to put this at a reasonable track where you could have the benefit of those three rulings. Thank you, Your Honor.

THE COURT: Let me hear first from the defendants. What are you --

MR. CHERRY: Your Honor, Steve Cherry, speaking for both the wire harness defendants and this other -- the defendants other than bearings and anti-vibration rubber parts in what plaintiffs have referred to as tranche one.

So there's really two issues. One, I think Mr. Kessler mentioned that we had no objection to their motion and that's true, we don't take a position -- I think it is wire harness defendants or the other defendants to that motion, but as a wire harness defendant I think we have no objection to what they are seeking so long as it doesn't slow down what we are doing.

I think the Court has indicated that you would like

to get to a prompt resolution in wire harnesses. We do see the parties being under some stress to keep to that schedule just for wire harness, people working very hard on the plaintiffs' side as well as the defendants' side, I think there have been difficulty meeting deadlines and we do worry about additional stress on the parties in trying to meet that deadline as we throw in more cases.

THE COURT: I understand that.

MR. CHERRY: That's our only concern.

The other issue is in connection I believe with the plaintiffs' filings in opposition to their motion, they submitted this tranche one schedule proposal and we filed something just to make clear the Court shouldn't rule on a schedule that affects the other cases in that proposed tranche one without allowing us to continue to meet and conferring and if there is a dispute to present our positions, and we are meeting and conferring about that and maybe we will meet -- we will work that out. We are hopeful, and if not then we should brief that for Your Honor. Okay. Thank you.

MR. KESSLER: Your Honor, if I could just clarify?

THE COURT: Wait a minute.

MR. WILLIAMS: Do I get to respond at some point?

MR. EVERETT: If I could just address anti-vibration rubber parts.

THE COURT: Just a minute, just a minute. Calm down. Why does plaintiff want to speak before I hear defendants?

MR. WILLIAMS: Well, I guess partly because there were a lot of things Mr. Kessler said that calls for a response, and they may get lost in the shuffle.

THE COURT: You won't forget them. Sit down. Let's do the defendants.

MR. KESSLER: Just to clarify, Your Honor, just so the Court knows, we absolutely are not seeking to delay wire harnesses in any way, shape or form. In fact, our schedule mirrors it but it is separate and so I just wanted to be clear from the Court and what --

THE COURT: I know that's clear.

MR. KESSLER: Thank you.

THE COURT: Let's hear from you.

MR. EVERETT: Good morning, Your Honor. Clay Everett for Tokai Rubber and on behalf of the anti-vibration rubber defendants.

So anti-vibration rubber is really in the same position as bearings, and I don't want to repeat the points Mr. Kessler made but I just wanted to note a couple points so you can understand the products and frankly the benefit both to our case, to justice and ultimately to the operation of the MDL of adopting the schedule that we propose for

anti-vibration rubber.

So first of all the products -- anti-vibration rubber products there's a constellation of different products, they are used in different parts of a vehicle, they are little rubber pieces that are used to control the vibration of for instance the road vibration as it is transmitted to the vehicle.

So like Mr. Williams said before in relation to electronic products, there is really no overlap between for instance wire harness products and anti-vibration rubber products, they may go into the same vehicles in some instances just like an optical disk drive goes into a computer as does a TFT LCD product. So there are really different products at issue, they are operating in different markets, and I think there is going be different effects in relation to the underlying conduct. So we are dealing with different conspiracies, different defendants and different products, and even where there are some potential commonalities downstream those are likely to impact the different plaintiffs differently depending on how the different underlying conduct operated.

There is no reason to believe that what happened in wire harness is the same as may have had in relation to anti-vibration rubber products. They are different products, I think ultimately there are going to be different models

that are at issue, and frankly we both think it benefits the Court and the parties in general to have an opportunity, as Mr. Kessler explained, to see a variety of different products, how it may affect ultimate purchasing decisions and in particular the critical issue for class certification, which is one of the elements of the claim as Mr. Tubach explained previously that each individual class member was, in fact, impacted by the particular conduct, the particular conspiracy that's alleged in that particular place.

So even though we have now 32, 33, 34 different cases here involving different auto parts, each one is really a different conspiracy, that's the way they have been alleged and ultimately it will be the Court's duty in assessing class certification to determine that for that particular conspiracy there was impact on a wide enough basis that the plaintiffs can rely on common proof to establish the basis for their claims.

THE COURT: Thank you.

MR. EVERETT: Just briefly, we have proposed a schedule that I don't think there is any dispute from the plaintiffs that is practicable that the parties could meet, it is inline with schedules and other complex antitrust cases of this type, the only dispute is whether our case and really the other cases should have to wait and see what the Court rules in relation to wire harness before the Court considers

class certification. We don't think that delay is warranted.

Thank you, Your Honor.

THE COURT: Thank you. Mr. Williams?

MR. WILLIAMS: Thank you, Your Honor. Steve Williams for the end payors, and I think probably for auto dealers. The directs have some different issues so they are going to speak for themselves.

I would like to let some of the air out of Mr. Kessler's arguments if I could. Starting with just a silly one, pointing at all of those people, so unless that row of Cleary Gottlieb lawyers are about to help the plaintiffs I think that's just kind of maybe a joke, I don't know.

THE COURT: What did you say, they can't help the plaintiffs?

MR. WILLIAMS: Well, this argument of look at all of these plaintiffs' lawyers over here, well, half of that gallery is defense counsel, but it is a silly point.

And to point a finger at us and say we are inadequate because we don't agree with their proposal is a silly point too because that's what it is about, we don't agree with them. It is not that we couldn't do it, it is not that we don't have resources. In fact, if you look at our proposal we propose doing six cases at once, not three, six. Our proposal, Your Honor, and we think given the history of

this case it makes so much more sense and that's really what this is about, it is just a different proposal, and frankly if AVRP and bearings defendants did not think they had a tactical advantage here they wouldn't have made this proposal.

Our proposal is timed from six months from your decision on the wire harness class-certification motions we would file in those other six cases.

THE COURT: Okay. Let's look at what that schedule is. The argument in the wire harness was in mid -- maybe it was May 2017?

MR. WILLIAMS: I believe that is correct.

THE COURT: And then I have to decide so I have to give myself four or five months, I don't know, say the end of 2017 to be sure, and then you said six months off --

MR. WILLIAMS: And then we file.

THE COURT: So it would be 2018 for six parts?

MR. WILLIAMS: At least six parts.

THE COURT: Well --

MR. WILLIAMS: Let me tell you why I think this is a more realistic proposal. First of all, as -- and I hesitate to tell the Court what it thinks or what it intends, but at our last hearing when pretty much the same argument was made what the Court said is I'm going to do wire harness first because then we will know, we will know some important

things that are going to guide how these cases go. This is a critical point that I think shows why the argument that these defendants are making to you is very misleading when they say these are very different cases, the defendants aren't the same, the conspiracy is not the same. For our purposes, the end payors and the auto dealers, that's not the key part of this case and frankly that was really the basis of Mr. Tubach's and Mr. Reese's arguments about why they needed more time for depositions because they need to show the passthrough from the defendant to the OEM to the auto dealer to the end payor.

So at the first level where there is a difference where they conspired, where they fixed the price of the bearing or the anti-vibration rubber or the wire harness, that's not the relevant inquiry in determining what's the best approach to class certification because those facts are going to be what they are, and with all of the pleas -- if I can pause to say, Mr. Kessler says not a felon, maybe not but paid $400 million to the Japanese Fair Trade Commission and the European Commission so they are not an innocent party here, but the point of it is at the liability part I don't think there is going be a huge contest for whether misconduct occurred and whether it caused an overcharge from defendants to the OEMs.

Our case, auto dealers and end payors, is about

what happens after, and that work and that analysis that we present to you and defendants contest and you rule on in wire harness is going to guide all of us on the successive motions. It is not a better use of time and resources to do three at once because those differences at the top end where the conspiracy took place from the defendants to the OEMs aren't really a pertinent part of the analysis for the end payors and the auto dealers. The pertinent part of the analysis for the end payors and the auto dealers is can we show you that the overcharge passed through the chain, and no one has pointed to any reason why there is a material difference depending upon the parts that would make it more efficient to do three of these at once before you've even ruled on the first one. It would be wasteful, it wouldn't be efficient, it is a strategy designed to gain a tactical advantage to the detriment of the plaintiffs.

And we can talk about Rule 1, but the first word in it is just so let's look at who's moving here for this accelerated schedule to say let's do three motions all at once before you have decided a single one. In anti-vibration rubber parts Yamashita pled guilty, Bridgestone pled guilty, Toya plead guilty, there is one more defendant we talked before about the fact that there is usually somebody who cooperates with the government in these cases and doesn't plead.

In bearings, JTEKT pled guilty, was fined by China and the JFTC, and SK pled guilty, and they were fined by the JFTC, Canada, the Europe Commission, Singapore, China and the Korean Fair Trade Commission. Schaeffler, they were fined by the Europe Commission. SKF-U.S.A., their parent -- I correct that, Schaeffler and SKF-U.S.A., their parents fined by the Europe Commission and NTI I talked about.

The reason I say that is the core of those AVRP and bearing defendants' argument, the core of it, if you read the papers, the sole thing holding their argument up is we the defendants are being prejudiced because the schedule is not fast enough for us.

So if you balance this and you say these are the people who have all been found by governments all around the world to engage in the conduct and on this side are the plaintiffs who are trying to prove their claim, I don't think that scale tips in favor of the people who did the bad conduct to say we should give you a better schedule because you're the one suffering here. There is no due-process claim supported under these facts. And the five years is also pretty misleading given we didn't proceed with discovery until stays were lifted, until motions to dismiss were decided, so that's just an irrelevant fact to throw out there.

And the industrial parts, that's not an issue

either because that's not in the end payor auto dealers case, that's only in the direct purchaser case, they plead how they plead, we plead how we plead, that has nothing to do with our case.

So the affected vehicles from the guilty pleas, from discovery, from investigation, for all the parts that we have gotten information because notwithstanding the bearings defendants wanting to rush and move, we are ready to go, they are not real forthcoming with information, is all Toyotas, Hondas, Nissans, Subarus, Isuzus, Mitsubishis, it is all the same Japanese cars that are in every other case.

So the core of where these cases overlap for the end payors and the auto dealers is in Japanese vehicles that are the same for bearings and AVRP that they are for every other case. The proposal being made here, it doesn't advance anything except the interest of those two defendant groups and it really sets for the Court a pretty dangerous precedent which is to do 32 of these at one time -- seriatim I should say, one after the other after the other. And the delay we are talking about I grant you it is further out than what they are talking about, but what they are talking about doing the three before you decide one doesn't make sense.

What we are proposing, while it has a longer delay it then puts more cases up for resolution sooner. We agree, class certification is very important. We disagree, I could

not disagree more vehemently with the suggestion made that we would be happy waiting forever, we would be happy if class cert never happened, that's absurd. It is as important to us as if not more than it is to the defendants. We have all known since we walked into this courtroom the first time that this case is about class certification, it is not about liability, they can't make it about liability, it is all about class certification, and to prejudice us with this type of proposal is frankly contrary to why there is an MDL, why we are here, what Rule 1 says.

And I know the Department of Justice is going to be reporting to you soon, I know they have communicated with some of the defendants, that could drastically change things as well depending on what they tell you about the stay. We may be in a position to present to you something that would get everything on the table within a couple of years so that we are not doing this in 2020, 2025.

So from our perspective this proposal doesn't serve anyone's interests except those two groups, and to refer to what Mr. Cherry said, we are talking with all the other defendants, we are actually in a lot of ways in a similar place with all the other defendants, so for these two groups to leapfrog the heart of this case in the manner that they are proposing is unfair, doesn't serve anyone's interest except their own selfish interest, doesn't serve the Court's

interest because now you are going to do three class-certification motions at one time before you have decided one, it doesn't make any sense.

So for us we think this is simple, as simple as it could be in this case. We think the proposal that learns from what you do on that first certification motion and then presents as much as can reasonably be presented to you for resolution at a practical early time is the best proposal.

I just want to lastly comment, the briefs talk a lot about that language in the rule.

THE COURT: About what?

MR. WILLIAMS: About early practicable time, and then there is a lot of discussion about in other cases they did this. Well, other cases take longer sometimes because every case should have a schedule that's appropriate to serve justice in that case, and all we want is a rule that appropriately serves justice in this case.

Thank you.

THE COURT: Okay. Anything else?

MR. SPECTOR: Your Honor --

THE COURT: Sorry, Mr. Spector.

MR. SPECTOR. It's still morning. Good morning, Your Honor.

THE COURT: Good morning.

MR. SPECTOR: Eugene Spector on behalf of the

direct purchaser plaintiffs.

We have all written our briefs and we have given you the law and our positions, there are some things though that I think need to be dealt with. The -- and we are talking about bearings because we are at this time not in the AVR case so our concern is with this bearings' motion only. There is a schedule that has been proposed by the bearings defendants that would be quick, it would get the class-certification motion presented to you shortly after the wire harness class-certification motion. We are okay with doing something that says we don't have to wait until after your wire harness decision if that's what you want to do. Does it make sense to wait? A great part of me says yes, a great part of me says that we would get a lot of clues about how our experts should be dealt with, what issues we should focus on, things that would make it easier in dealing with the other cases, but I think we can proceed reasonably without that. I think we can proceed with an earlier motion, I can agree with Mr. Kessler for a change on one thing, that we can do it that way, but not on the schedule that they have proposed.

Would it be unusual to have a different schedule for the direct purchasers and the indirect purchasers? The answer to that question is no. That happens far more often in these kinds of cases than it doesn't happen, and so the

fact is that we can proceed on a separate schedule if that's what the Court decides.

THE COURT: Okay.

MR. SPECTOR: The one thing that we disagree with Mr. Kessler on in his argument is when he says to you that you would get a benefit from seeing two other cases as well as wire harness at the same time because you could get different nuances about how the class should be decided. If the cases are completely separate as they say they are, and the conspiracies are completely different as they say they are, and the products are completely different as they say they are, I am not sure how that helps you in wire harnesses. It doesn't seem to me to make sense but that's me.

Also in terms of the schedule that they are proposing, they haven't produced any documents yet, we don't have the transaction data yet, so I'm not sure how we could meet the schedule that they have proposed in any event. We have proposed a schedule that modifies what they have, we are very close, I think we propose having class certification -- let's see, we would propose that our class-certification motion be filed in January of 2017, and they are talking about August of 2016, but with our proposal we would say the class certification hearing could be held anytime after say June 30th, or June 30th on, while they are talking about June 6th.

So at the end of the day in terms of how you resolve the class certification schedule, we are less than a month apart, we are just proposing some discovery options that we think make more sense in terms of giving us the time to evaluate the documents and the transaction data they have produced and take the depositions that we are going to have to take because all of that takes time, not three or four months, which is about what they would give us from the completion of document production, but more likely 11 or 12 months to be able to do that. Those are the differences between us.

THE COURT: Okay.

MR. SPECTOR: Any other questions for me, Your Honor?

THE COURT: No. I understand your position.

MR. SPECTOR: Thank you.

THE COURT: Okay.

MR. KESSLER: Your Honor, I think the first most important point is that all counsel agree we can meet this schedule. Mr. Williams made it very clear, and I'm happy to hear that, he said it is not a question of whether they could do it, it is just a question of whether they should do it, so we have no doubt that everybody can meet this schedule. The difference is in the directs' proposal and ours are weeks on internal deadlines, and I'm confident we can work that out

with the Special Master if that was the issue. The real issue for the Court is the overall framework you want for these.

Now, on this issue Mr. Williams is not correct that the only issue for the auto dealers and the end payors is passthrough. That is a very important issue but the first issue in every indirect case is they must have a common methodology for showing that all class members suffered an overcharge, and you have to start first with a common methodology for showing what the overcharge is. Numerous class actions are denied at the indirect level because that first critical point which cannot be avoided must be met, and the problem is since that is an essential issue for every indirect case and every direct case it is going to be one of the most important issues you make in this entire MDL. So the idea that you wouldn't benefit from seeing how it plays out with different parts in different markets with different market forces, how that works, I just don't understand it. If I was the judge sitting there I would certainly want to see -- let me see a few of these before I start issuing my decisions, that's number one.

Number two, the indirects are going to have the burden to show you not just that there was some passthrough in general but that in a case involving bearings on measuring a way to show this is how much was due to bearings, that

wasn't due to wire harnesses, that wasn't due to one of the other 32 parts. In other words, what the Supreme Court case in Comcast makes clear, they are going to have to sort out one effect from another effect because a class member in the bearings could only recover the bearings overcharge, not some other.

Now, they can't say it is all the same models because it is not, some of these alleged conspiracies affected some models and not others. Some of these alleged conspiracies were directed at some OEMs and not others, so they are going to have to sort all of this out through some common methodology, it is an enormously daunting task, but the Court by looking at a few of these is going to have a much better idea when they are looking at this effect well, is this mixing up bearings effect on this auto dealer? With a wire harness effect, can I tell a difference -- will the jury actually be able to tell the differences on a common methodological basis? The Court has to be benefited by looking at a few of those at the same time.

So if there is no prejudice to them and if this would help the Court, which I believe it will. Their proposal is you should do six at once, I don't see how doing six at once after you have read that your wire harness decision six months later so now a year later is going to be any better for the Court than not having three around the

same time, we are not even saying at once, around the same time, to inform those first group of decisions for the rest.

My last points are as follows: This is also a hedge for this MDL. What if the wire harness defendants settle? If the wire harness defendants settle somehow between now and then, and we have put this off because we are going to be at some prolonged scheduled and not ready to go, well, the whole MDL will be waiting because this case didn't happen. Okay. That's number one.

What if you find something unique about wire harnesses as the direct purchasers said they are all unique so it doesn't inform you of the others, you need a few to get together. This is a hedge for the case to move forward correctly.

And finally, Your Honor, I would say there can't be any harm in allowing this. If you allow these schedules to go forward, which they said they could meet, you could decide at the time of filing, you could keep considering it, get us ready to file, get these three cases ready to file, okay, and then you could decide six months from now do I want to have all three filed around the same time but don't let --

THE COURT: When will discovery be done in all of these parts?

MR. KESSLER: Your Honor --

THE COURT: I mean, enough to be ready for class?

MR. KESSLER: Your Honor, we are confident we have proposed a schedule we can meet, we believe we can meet it just as easily as the wire harness defendants can meet it. That's another problem, what happens if the wire harness schedule gets delayed some way for some reason we don't know. We think we can meet in the bearings. And it is interesting they said we haven't produced everything yet, we have met every deadline we proposed, we haven't hit any of the deadlines we haven't met yet, we intend to hit every deadline, Your Honor.

THE COURT: What about the Department of Justice stay, is that affecting --

MR. KESSLER: It has no impact at all on bearings at all anymore or anti-vibration rubber parts, we are 100 percent ready to go.

THE COURT: Okay.

MR. KESSLER: Thank you, Your Honor.

MR. WILLIAMS: Your Honor, I will be brief. A couple things.

First, we didn't say we would meet his schedule, and frankly all of the plaintiffs agree vehemently with the suggestion that they are doing great in providing us data, starting with the most important type of data, which is transactional, it is not happening. More importantly though we alluded to the fact that as to every defendant except for

bearings and AVRP we are in the middle of discussions, they have been fruitful, they have been comprehensive, and what those discussions have been looking at is this whole MDL which Your Honor is presiding over, not just serving the interest of one or two groups but figuring out a plan for the whole MDL, which is what all of us would benefit from having a plan that leads to a resolution, and we may not ultimately agree with everything the defendants propose, we may agree on a lot, but what I would propose since we are in the midst of those discussions, we have exchanged positions as recently as Thursday and Friday of last week, is that we have an opportunity, a few weeks perhaps, to bring those discussions to an end and present to you whatever the results of those discussions are and then you can make a decision.

THE COURT: Okay.

MR. SPECTOR: If I might, Your Honor, very briefly?

THE COURT: All right.

MR. SPECTOR: In terms of the schedule and Mr. Kessler telling you that the defendants are right on time, we have a separate problem. As you may remember, we had tried to amend the bearings complaint to add some defendants which are generally foreign subsidiaries or related companies of defendants that are already in the proceeding. They asked you to deny us that motion, which you did, and said file your complaint and move forward. Well, we

filed our complaint and some will accept service of those complaints but we are going to have to make Hague service on several of those defendants. That's going to delay the resolution of the bearings case from our standpoint. That's going to make it harder to be able to meet that class certification schedule because there's going to be catch-up discovery and there's going to be other defendants. I'm not sure how that affects and would affect the resolution of class cert in bearings.

THE COURT: Okay.

MR. SPECTOR: So I just wanted to make sure that the Court was aware of that.

MR. KESSLER: Your Honor, if I could just address that new point?

THE COURT: Yes. How will that affect class cert if it was to follow your schedule?

MR. KESSLER: It has no effect, Your Honor. In fact, this is the issue we argued before the Court last time, and what I argued to the Court is they should not be allowed at this late date to add additional defendants to the existing case which would have the effect of them coming in, I predicted, of saying let's slow down bearings because now we have to start all over again for new defendants. And what the Court ruled is you were not going to permit that, you said this was going to be a separate track.

So, yes, there are going to be issues of personal jurisdiction and others for those foreign defendants, and what the Court already ruled is they can't come in years later and when they knew about these other defendants and suddenly say we are now going to put a stake in the heart of bearings and throw it to the back by adding companies. So this is exactly what I argued why they shouldn't be joined and, Your Honor, I'm glad to say you agreed with that. So our case goes forward with the class certification. These other cases they may or may not be subject to jurisdiction. Okay. They may -- they are on a separate track, that was the whole point of that.

And the last point, Your Honor, is one thing about the point that Mr. Williams made about all of the other defendants, no other defendant groups want to go on this schedule, that's clear, only these three groups want to go in this, so putting us into the mix doesn't work because everybody else wants to go really slow, I don't know why, we don't, Your Honor. Your Honor, we have a right to do that.

THE COURT: All right. I'm ready to rule on this.

MR. WILLIAMS: I just wanted to clarify. I was not suggesting they be in that mix, I know they are not in the mix. I'm just suggesting let's see what every other defendant except these two has to say and then have a plan.

THE COURT: Okay. I mean, certainly the class

certifications are critical in this case. I think it has been recognized here that this is the decision that will have greatest impact in this litigation but considering that, considering that, the Court, as it said, wants to do wire harness first and wire harness is -- will be first, but I never implied that I was holding everything else until wire harness was done. If you knew me and I want to move things along, that would never be something that I would imply. We are not going on here for ten years before we have all of our class certs done.

So I have read with great interest, I have listened to your arguments, I have given it great thought, and I am happy to hear about the fact that from plaintiffs' perspective that it is not an impossibility, there are just other reasons why it should go with wire harness totally done.

I like the idea of having the information from other parts, I do, it is a new thing, I think it gives me a different perspective. I'm not saying I'm going to rule on those other parts right away, but I would like to have the information so I consider everything while I'm considering wire harness, so I have proposed a schedule that's none of your schedules but it is a very short schedule.

My schedule is as follows -- oh, and let me just add another thing, I made a note here while you were arguing.

You're arguing some of you about what the issues are that you have to determine in this class action and what comes first, I think that's even more of a reason to have more than one part to consider so that I will know -- at least get some idea of what these issues are from all the different perspectives.

Okay. Wire harnesses' motion for certification to be filed July 1st of 2016. Bearings' motion for certification to be filed July 29th, 2016. Anti-vibration rubber parts' motion for certification to be filed August 12th, 2016.

The responses in wire harness are to be filed November 1st, 2016, in bearings November 29th, 2016, in anti-vibration rubber parts December 13th, 2016.

Replies in wire harness March 1st, 2017, in bearings March 29th, 2017, anti-vibration rubber parts April 12th, 2017.

The hearings, these are target dates understanding that schedules could be changed depending upon in two years what is going on. May 3rd for the wire harness, I think we had that date before but May 3rd, for bearings May 24th, and the anti-vibration rubber parts May 31st.

It is a short schedule but we have got to get this case moving along. I think this will be helpful to the Court, and I hope to be able to follow it. I will enter an

order to this effect which will be on the docket.

Okay. With that we have some other motions but I would like to take a short break. Can we take ten minutes and then we'll resume? Thank you.

THE LAW CLERK: All rise. Court is in recess.

(Court recessed at 12:13 p.m.)

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(Court reconvened at 12:28 p.m.; Court and Counsel present.)

THE LAW CLERK: All rise. Court is back in session. You may be seated.

THE COURT: The next item on the agenda is the fuel injection motion.

MR. BAIRD: Yes, Your Honor.

THE COURT: Let me just pull it out here. Now, I know a lot of yours is sealed so if you want it sealed on the record you will have to say so or don't mention if you don't want it --

MR. BAIRD: Well, Your Honor, I think it will need to be, I need to mention some specifics.

THE COURT: Okay. So you tell us when that is so --

MR. BAIRD: Yes, Your Honor, and I will be glad if I miss something to correspond with the reporter afterwards.

THE COURT: Okay.

MR. BAIRD: Bruce Baird for Keihin Corporation, and appearing on Keihin's motion to dismiss the end payor's complaint only, that's the only complaint that has been served on Keihin.

I should tell you, Your Honor, to start with I saw a copy of your redacted opinion in the Keihin North America case last evening. I have not had a chance to look at the unredacted copy, it was too late for us to get a copy, although I now have it, I got it during the break.

I want to start by focusing on the two factual allegations, the only two factual allegations in the complaint against Keihin.

a global conspiracy the plaintiffs allege or any aspect of that conspiracy.

Every other allegation in the complaint involving Keihin is boilerplate alleged as to all defendants.

And as you know, Your Honor, in return for being subject only to single rather than treble damages, the amnesty applicant in this case is required to talk to the plaintiffs. If there was more to say about Keihin you would have seen it in the complaint.

Now, Your Honor is familiar with multiple

conspiracy law, I know Your Honor has written on it, these two allegations might well support at this early stage a conspiracy We think we have defenses but I'm talking about the allegations. What they do not suggest in any way is some global conspiracy with an overall plan and a common design to cheat automobile manufacturers all over the world.

So it is a classic multiple conspiracy situation. It is not that there is nothing that would support a conspiracy allegation, it is that there is nothing in these allegations, nothing at all that supports the big global conspiracy. If Keihin's involved in the conspiracy it is a different one from the one alleged by the plaintiffs.

And so let's go away from the narrow specifics now to ask what else is there in the complaint against Keihin from which Your Honor could infer that Keihin is or is not part of the big global conspiracy with an overall plan and common design that plaintiffs allege? There are plenty of boilerplate allegations that allege everyone talked to everyone and agreed with everyone to cheat everyone. Your Honor knows that none of that can be considered on a motion to dismiss.

Against most defendants you have a continuing Department of Justice investigation but as Your Honor knows

from the KNA motion, the Department of Justice has closed its investigation of Keihin so that's not going to support any inference, and I noted in your KNA opinion Your Honor did not use that investigation as supporting the inference.

So now what about guilty pleas? We have had talk about guilty pleas this morning, there are lots of guilty pleas here, plenty of guilty pleas. They certainly and rightly suggest to the Court that there's something going on here, but the plaintiffs still have to tie them to individual defendants. None of these pleas relate to events involving Keihin in any way. The argument can't be made that because defendant A pleaded guilty to a crime on facts not alleged to involve defendant B that an inference can be drawn that defendant B is part of similar criminal activity. That's just not a logical inference. It doesn't matter if defendant B is in the same industry, it doesn't matter if defendant B committed some other crime even with a convicted criminal, the question is whether they were involved in that crime and the crime that's charged or alleged here.

As Your Honor knows, no court would allow a jury to draw any inference whatsoever from a -- against defendant B from defendant A's plea to a crime on facts not involving defendant B, and that would be routine in a criminal case, and I submit, Your Honor, the same reasoning ought to apply here as to whether an inference can be drawn against Keihin

from other people's guilty pleas that have nothing to do with Keihin. As Your Honor knows, no plea, no charge, investigation closed, Keihin is not involved in any criminal matter here.

So how about market conditions? Can they support an inference that Keihin is part of a global conspiracy? Together with other allegations market conditions can be used and Your Honor has used them in that way, but standing alone clearly one can't say that because conditions are ripe for a conspiracy and others are involved in a conspiracy that any other company in that same market can be inferred to be part of the conspiracy.

THE COURT: But inferences are much more common and allowed procedurally in a civil case versus a criminal case.

MR. BAIRD: Yes, Your Honor, I agree with that, but I'm talking about here the logical -- it isn't even possible in logic to say that because conditions are ripe and others are involved that necessarily that means I can draw an inference that someone else is involved in that same big conspiracy where there are no specific allegations, nothing tying -- nothing other than these narrow points perhaps tying the company to a narrower conspiracy, but there is nothing tying to the big conspiracy, and to look at market conditions and say well, conditions are ripe, there's nothing else, it's not narrow, nothing else that's not -- doesn't look like a

narrower conspiracy but I'm going to say market conditions alone are enough, I submit that would not be logical, Your Honor. It is not -- it is the conditions, yes, but you need something else, you need something specific, something criminal, if you will, something that suggests illicit activity, not just the fact that conditions are ripe for it.

But in addition -- I want to make more than the general point on market conditions. In addition to the logical point, Keihin is differently situated with respect to this market; it is not a member of the same market because

And it -- the fact that market conditions in general are ripe for a conspiracy does not mean that Keihin, , is part of this overall scheme, common design involving allegedly all the automakers, so it is just not in the same market.

Let's think about that one customer logically. The actual inference I submit to Your Honor --

THE COURT: Is it connected to though in the fuel injections?

MR. BAIRD: Well, the two allegations and has pled guilty , but there is no connection -- I mean, there is a connection -- Your Honor could absolutely draw a connection in the narrow, in the two-allegation . If that

were the allegation I would not be standing here. That conspiracy survives a motion to dismiss. We have substantive defenses, we don't think it is there, but it survives a motion to dismiss for sure, but that's not what we are talking about.

We are talking about this global -- all the -- I mean, if Your Honor reads -- Your Honor has certainly read the complaint, all the automakers, everyone has discussed together, everyone has dealt with each other, everyone is dealing, and here is Keihin with , the only company that can say that before Your Honor, , not really in the same market because . Yes, they dealt with and, yes, but that doesn't mean Keihin is involved in everything. Did tell them about everything and make them part of it in some way? We have no allegation of that, not a whisper about that. The fact that pled guilty to I submit can't be used against Keihin. That is really that allegation, you know, in the criminal case would you let a jury infer from guilty plea in another case that Keihin must be guilty in the case before Your Honor.

And look at the logic of it, why join an industry-wide conspiracy if you have only one customer? There is no motive to do it. There are no other customers to

gain. They have nothing to do with the broad -- not to say they couldn't join the narrow conspiracy , but there is no one else to conspire with respect to for Keihin.

The natural inference, I submit, is that Keihin would not be involved in a broad conspiracy, forget about conspiracy, the broad conspiracy, and that's consistent with the only factual allegation made against Keihin of .

So now what do plaintiffs say? They claim, first of all, that Keihin is arguing the Copperweld Doctrine which requires over 50 percent ownership to apply, and Your Honor dealt with that doctrine in the KNA opinion, I'm not arguing that, we have never been arguing that in this motion. We made -- we are making the point as to Keihin that between the 41 percent ownership which, of course, is very substantial but not control, and the one customer, that the natural inference is Keihin was not part of a broad multi-manufacturer conspiracy rather than that they are part of that.

The plaintiffs also say one customer is enough, and they cite opinions to this Court that don't say that. The opinions concerning whether enough detail has been pled, whether small players as well as big players could be involved and, of course, those are totally different issues.

Your Honor can correct me, but I believe no company in this or any other auto parts case can -- in any such -- in any other case can plaintiffs factually allege that

, owns 41 percent.

THE COURT: Would a conspiracy -- could a conspiracy exist in this market relative to only one OEM involving this?

MR. BAIRD: Sure, absolutely, Your Honor. It could be -- if they -- as I say, if they allege a conspiracy , well, that's a conspiracy and they could allege that and that would be on the allegations in their complaint against Keihin that would survive. That's a different -- that's not the conspiracy they alleged. We invite them after Your Honor dismisses without prejudice to come back and allege that conspiracy and we will defend that conspiracy, but as Your Honor knows, for Keihin to be involved in this huge case is a huge burden for a small company, and if they should be well, that's fine, they should be, just because they are a smaller player doesn't mean they can't be involved, but because it is not logical that they are involved, it is not logical that they would be involved, that they would care beyond .

Plaintiffs also refer to the boilerplate allegations and they refer to , and we have already discussed that. I submit that between the strength of the inference from that they are not part of the broad conspiracy and the weakness of the contrary inference that Keihin is part of something broader than just , plaintiffs' global conspiracy complaint against Keihin should be dismissed.

That's really my argument on that, Your Honor. I have one other point to mention very briefly. We make a jurisdictional argument, and on this, Your Honor, Your Honor will have to do all the work for plaintiffs if this motion is denied because they have made absolutely no jurisdictional allegations as to Keihin that are factual in nature. I don't know whether they could or not, but they haven't. They haven't even tried to do more than just boilerplate applicable to everybody, and that's enough I submit Your Honor should not stand for that and should dismiss with leave to amend on that ground.

THE COURT: Okay. Thank you.

MR. BAIRD: Thank you, Your Honor.

THE COURT: Response?

MR. OCHOA: Good afternoon, Your Honor. Omar Ochoa on behalf of the end payors.

Your Honor, Keihin's arguments presented today in

its motion to dismiss are substantially similar to the arguments previously presented by its U.S. subsidiary Keihin North America, and yesterday the Court denied in its entirety KNA's motion to dismiss. I know counsel mentioned that he did not have a chance to review that in full before the argument today, but EPPs are prepared to fully argue the merits of Keihin's motion to dismiss but we don't believe we need to do that because yesterday's decision essentially controls almost all of the issues before the Court in Keihin's motion to dismiss with the exception of the jurisdictional argument, so if Your Honor has questions about the overlapping issues --

THE COURT: No, but the jurisdiction you can address.

MR. OCHOA: Yes, I'm happy to address the overlapping issues if Your Honor would like but otherwise we don't want to take up the Court's time unnecessarily, we simply ask that the Court apply its opinion for denying Keihin North America's motion to dismiss and similarly deny Keihin Corporation's motion to dismiss where the arguments overlap.

THE COURT: Okay.

MR. OCHOA: So as I mentioned, the only portion of Keihin Corporation's motion not addressed by yesterday's ruling is the jurisdictional argument, but even that

argument, Your Honor, is controlled by another previous ruling and that is this Court's order denying Denso Korea's motion to dismiss the EPPs' complaints for several parts including this part at issue, fuel injection systems. There is no West Law citation but the court's citation is Case No. 13-cv-903, docket number 89.

The Court issued this opinion denying Denso Korea's motion to dismiss after the EPPs submitted their response to Keihin's motion to dismiss so we didn't have a chance in our brief to discuss it, but that opinion controls Keihin's jurisdictional argument as well because the situation is identical. There, just as here, the main point of contention regarding jurisdiction is that the purposeful availment prong of specific jurisdiction is not met. Denso Korea did not, however, submit an affidavit in support of its motion to dismiss, and so the Court determined that this failure to not submit an affidavit, quote -- meant that, quote, no evidence contradicted to EPPs' allegations supporting jurisdiction. As a result, the court focused exclusively on the EPPs' jurisdictional allegations and determined that they were sufficient.

Similarly here, Keihin did not submit an affidavit in support of its motion to dismiss so there are no -- there is no evidence contradicting the EPPs' allegations supporting jurisdiction. And the -- those allegations are -- those

allegations against Keihin are identical to those that were alleged against Denso Korea, which this Court already upheld to be sufficient to extend jurisdiction, mainly the specific allegation that this Court has personal jurisdiction over Keihin, that Keihin transacted business in the United States by directly selling fuel injection systems into the United States, and therefore purposefully availing itself to the forum, and that Keihin directed its price-fixing conspiracy at the United States.

So all of these allegations are in EPPs' complaint against Keihin, they are not controverted because Keihin did not submit an affidavit in support of its motion to dismiss, and just as the result was in Denso Korea those allegations were sufficient, they are sufficient here on their own to establish jurisdiction over Keihin. Again, Your Honor, EPPs can argue more fully the merits of Keihin's jurisdictional arguments and some of the points raised by counsel if Your Honor would like but, again, we don't want to unnecessarily take up the Court's time because we think the ruling denying Denso Korea's motion to dismiss controls a decision here as well.

THE COURT: Okay. Thank you.

MR. OCHOA: Thank you, Your Honor.

THE COURT: Reply?

MR. BAIRD: Your Honor, obviously plaintiffs would

like Your Honor to rule the same way on both of these motions, they are different however. In the KNA motion there were two parts of Your Honor's opinion -- well, three parts, one we are not challenging and I have not argued today, which is the joint-venture point. The other two that I have not dealt with because they are different points here today, one was the Coppperweld argument and Your Honor dealt with that, analyzed Copperweld and decided against KNA on that point but that's not Keihin is arguing.

Your Honor also dealt with the closed-investigation point, and we are not arguing about the closed investigation, I think Your Honor actually adopted our position that the closed investigation was not part of Your Honor's analysis on what tied KNA to the larger conspiracy.

We are arguing two different points here and they are two points that plaintiffs haven't addressed and I don't think can address effectively and obviously don't want to address. One is that the inference -- the inference from one customer is key, it shows they are in a different market, it shows that they are not part of the same conspiracy, and then in addition -- the multiple conspiracy argument, that's the word I was looking for, was not argued in that way in the KNA motion. There is a conspiracy here, I dealt with that explicitly today, we didn't deal with it in the same way in the KNA motion. It is a conspiracy Your Honor might well

find between Denso and Keihin but that's not the conspiracy that's charged, and the question is what else can they find, and all that they found are market conditions, guilty pleas and boilerplate. And, Your Honor, I submit we have dealt with both the market-condition point based on the one customer and the guilty-plea point based on the fact that Keihin has no such guilty pleas that it is part of or referred to in or can be -- or that anything can be inferred against Keihin from.

THE COURT: Okay.

MR. BAIRD: Thank you, Your Honor.

THE COURT: Okay. Thank you. The Court will issue an opinion.

The next issues have to do with the settlements, I believe, wire harness, and Fujikura is first.

MR. SELTZER: That's correct, Your Honor. Mark Seltzer for the end payor plaintiffs.

Your Honor, we are not going to be proceeding with the motion for preliminary approval today with respect to Fujikura. An issue has been raised regarding the settlement. The parties are involved in discussions to see if it can be resolved. If it can't be, then we plan to ask the Court to hear the matter and set up a procedure to see if it can't be resolved, but we are not prepared to proceed today.

THE COURT: Okay. We will hold that one then.

Then we have auto dealers' motion for settlement.

MR. RAITER: Yes, Your Honor. On Fujikura the auto dealers have submitted the preliminary approval papers for the Fujikura settlement. We did not request a hearing, that is ready for your ruling without a hearing unless you wish to hear from us.

THE COURT: No, you didn't request a hearing on this. The Court reviewed your papers, and I think that you have hit absolutely everything in the settlement that is necessary under the rules, and the Court does approve that adopting what you have said in your motion.

MR. RAITER: Thank you, Your Honor.

THE COURT: Now, we have an add-on though, this is the proposed order permitting Fujikura defendants to withdraw from the deposition protocol. Can we address that?

MR. RUBEN: Mike Ruben, of Arnold & Porter, for Fujikura.

Your Honor, pursuant to the settlement agreements with both the auto dealers and the end payors, I think it is paragraph 39, it simply provides that within five days the parties will mutually withdraw from any pending motions. This order that we submitted to Your Honor has been approved by both the auto dealers and the end payors. It simply effectuates --

THE COURT: The end payors now aren't out because

they have withdrawn that?

MR. RUBIN: Right, they can certainly speak for themselves as to this piece, I don't think -- the settlement agreement is still signed so I'm not sure where that stands, whether they agree on this withdraw issue or not. The purpose of it, Your Honor, was simply -- I think the only pending motion was the one you already heard today and has already ruled upon, it was just a formality to take our name off of the papers so we are complying with the settlement agreement. It is modelled on what you signed in I believe the AutoLiv case that had a similar provision.

MR. SELTZER: And, Your Honor, for the end payors, Mark Seltzer.

We would suggest that the status quo just be maintained for the next five days or so and we will see if we can resolve this issue, and if we can't we will advise the Court.

MR. RUBIN: Honestly, Your Honor, given that you have ruled on the motion it is essentially a moot order so I don't know even with the status quo you would have to do anything further on this document.

THE COURT: So I don't even need to enter this order?

MR. RUBIN: Assuming the auto dealers and end payors agree with that, I think that's probably right.

MR. SELTZER: I think that's right, Your Honor.

THE COURT: So I'm going to moot this order.

And on the preliminary approval order -- wait a minute -- that we just talked about.

MR. SELTZER: The preliminary order in auto dealers, Your Honor?

THE COURT: Yes.

MR. SELTZER: Yes.

THE COURT: Do you have the order, one was submitted but I don't --

MR. RAITER: I don't have a hard copy with me but we will get one to you.

THE COURT: You will present the order then.

MR. RAITER: We did submit one but we will submit another --

THE COURT: Yes, I thought there was but I don't have it here. You will present another one so that we have it.

I think I made clear for the record I haven't gone through all of the Rule 23 things but I'm adopting it as you stated in your motion, and your order laid it out all very clearly.

MR. RAITER: Thank you, Your Honor.

THE COURT: Okay. Let me just see what we have here. These are the radiator end payor plaintiffs?

MS. TRAN: Radiators and ATF warmers.

THE COURT: And ATF warmers, yes. May I have your appearance, please?

MS. TRAN: Elizabeth Tran for the end payor plaintiffs.

As you are aware, we are seeking preliminary approval of our settlement with the T. Rad defendants. We have alleged claims against them in two cases, radiators and ATF warmers. The settlement of $7.41 million is fair, adequate and reasonable for a variety of reasons. The settlement offers significant compensation to the settlement classes that will be available much earlier than if this case had gone to -- continued through trial and appeal. We are going to allocate 6.7 to radiators and about 700,000 to ATF warmers, and that's based on affected sales.

The settlement arises from extensive arm's-length good-faith negotiations between experienced counsel over a period of several months. The settlement comes pretty early in this litigation. It is the first settlement in both ATF warmers and radiators. The settlement calls for significant cooperation from T. Rad in the continued prosecution of end payors' claims. It calls for attorney proffers, witness interviews, depositions, relevant documents, transactional data. The settlement further enjoins T. Rad for 24 months from per se violations of the

Sherman Act with respect to the sale of radiators and ATF warmers.

End payors are also seeking provisional settlement -- provisional approval of the proposed settlement classes per Rule 23. Provisional certification is warranted here as it is in the other settlements before -- that have come before this Court because the settlement classes are so numerous, that joinder is impractical, the claims presented here involve common issues and are typical of the respective settlement classes. End payors and the settlement class counsel will fairly and adequately represent the settlement classes because our interests are aligned and common issues predominate over any individual issues. Settling these cases on a class basis is simply superior to other means of resolution.

Finally end payors request that the Court stay the proceedings against T. Rad in accordance with the settlement. We ask the Court authorize end payors to provide notice of the settlement agreement to the class members at a later date, and we also ask that the Court appoint interim co-lead class counsel as the settlement class counsel for this settlement. Thank you.

THE COURT: Okay. The Court has reviewed the pleadings that you submitted here and certainly the Court is aware the governing standard is contained in Rule 23(e) which

requires this Court to determine that the settlement is fair, reasonable and adequate, and the Court looks at the proposed classes also in proving this, and based on the information that has been presented as well as the briefs relating to these component parts, the Court finds the proposed settlement does deserve preliminary approval.

Certainly we know that federal policy favors settlement. The factors here favoring the settlement, one is the amount of money which settlement is which you put on, I think the total was $7.4 million, right, between the two parts. Considering the expense, duration and uncertainty of this litigation the Court finds that it is fair, there are complex issues here, foreign parties, so there is great risk. Also the Court notes that this was negotiated at arm's-length by experienced counsel and therefore the Court finds that it is fair.

The proposed settlement classes should be provisionally certified under Rule 23. There certainly is numerosity, commonality, typicality and adequacy of representation. There is a common question that predominates in this antitrust action, and the Court finds that the class resolution is a superior method to handle this matter.

The Court will therefore approve the -- preliminarily approve the proposed settlement and certify provisionally the settlement classes as outlined in the

briefs, and the Court will appoint the class counsel for the settlement class as requested.

There was also I thought part of it a motion to stay the proceedings against T. Rad; is that correct?

MS. TRAN: That's correct.

THE COURT: Yes, in accordance with the terms of the settlement agreement, and the Court will authorize the settlement class counsel to defer notice to a later date. Okay. I will sign an order to that effect if you will present it.

There is an add-on which is the motion -- the end payor's motion for authorization to disseminate notice to the end payor plaintiffs settlement class and appoint notice of the settlement claims administrator. Is anybody addressing that one?

MR. SELTZER: Your Honor, Mark Selzter, again, for the end payors.

We have submitted the motion which covers two of the settling defendants. We are prepared to have the Court act on the proposed notice, but in light of the issue that I have referred to with Fujikura and certain of the other defendants we would like to see if we could work out whatever the problems or differences are between us before actually proceeding at this time with a notice, we would be on a very short fuse, and then let the Court know whether we should

proceed with the notice as filed or perhaps as modified. Thank you, Your Honor.

THE COURT: Okay. Thank you.

MR. RAITER: Your Honor, Shawn Raiter on behalf of the auto dealers.

On the agenda you have T. Rad for preliminary approval of settlements between the auto dealers and T. Rad. You have already preliminarily approved that on the papers --

THE COURT: Yes.

MR. RAITER: -- so that need not be addressed today.

The auto dealers also have submitted to you for consideration on the papers our motion for leave to disseminate notice, and we would request that we proceed with that motion at this time, not to argue it but we are not taking it down as the end payors are.

THE COURT: Okay.

MR. RAITER: Thank you.

THE COURT: The Court has reviewed the motion by the auto dealer plaintiffs -- now, this involves 11 parts?

MR. RAITER: It involves all of the settlements for which you have granted preliminary approval to date including the Fujikura settlement that you just granted.

THE COURT: Okay.

MR. RAITER: So that would be all of the

settlements that we have put before the Court as of this time.

THE COURT: All right. And I believe you said the defendants agreed or there was no objection?

MR. RAITER: We -- they consented to the language of the notice, yes, we --

THE COURT: The notice needs dates though.

MR. RAITER: The notice has dates -- it should have dates in it, the one that was presented to you.

THE COURT: The one I have has the blank dates.

MR. RAITER: We had talked with your clerk and scheduled the final fairness for November 18th.

THE COURT: Okay.

MR. RAITER: We are right up on needing to get the notice out if we are going to hold that date, we certainly would like to, but it should be ready for your consideration.

THE COURT: Okay.

MR. RAITER: Thank you.

THE COURT: The Court will sign that order. All right. On the end payors we are holding it until when -- when are we holding it to?

MR. SELTZER: Your Honor, I think we should know whether we can resolve these issues over the next week or so, and then we will advise the Court if it is resolved or if we should proceed with the notice as presently filed with the

Court. Thank you, Your Honor.

THE COURT: Okay. Thank you.

MR. IWREY: Your Honor --

THE COURT: Yes, Mr. Iwrey, come on forward.

MR. IWREY: This is Howard Iwrey on behalf of ZF TRW defendants.

With respect to Mr. Raiter's motion to disseminate notice, we did consent to the language in the notice. We have also filed a motion to stay proceedings in the Rush case which may have an impact depending on how it is resolved, but the end payors and ZF TRW are discussing that.

MR. RAITER: Auto dealers?

MR. IWREY: Auto dealers, excuse me.

MR. RAITER: Correct. So we have -- the plan would be right now we would proceed with our notice plan and the notice because the language of the notice was agreed upon. Depending on the outcome of this Rush Truck's motion, there may be some reason to come back to the Court about supplemental notice recipients, we don't agree that it is necessary to at this time --

THE COURT: Recipients, not notice?

MR. RAITER: Correct.

MR. IWREY: That's correct.

THE COURT: Okay.

MR. RAITER: In other words, we would have to

potentially come to the Court to discuss supplementing the notice plan, not the notice itself.

THE COURT: Okay.

MR. IWREY: And we did not want to delay at least the first wave of notice.

THE COURT: Okay. So it is just a matter of there may be more people who are going get it --

MR. IWREY: That's correct.

THE COURT: Okay.

MR. RAITER: Yes.

THE COURT: Got it. Thank you. Anything else? Anybody else?

(No response.)

THE COURT: No. We are done. All right. Thank you. Good luck to all of you.

THE LAW CLERK: All rise. Court is in recess.

(Proceedings concluded at 1:06 p.m.)

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CERTIFICATION

I, Robert L. Smith, Official Court Reporter of the United States District Court, Eastern District of Michigan, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing pages comprise a full, true and correct transcript taken in the matter of In re: Automotive Parts Antitrust Litigation, Case No. 12-02311, on September 9, 2015.

s/Robert L. Smith
Robert L. Smith, RPR, CSR 5098
Federal Official Court Reporter
United States District Court
Eastern District of Michigan

Date: 09/17/2015

Detroit, Michigan